

# THE PROBLEM OF INTERVENTION

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THE PROBLEM OF INTERVENTION

A Thesis Presented

by

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Submitted to the Graduate School of the  
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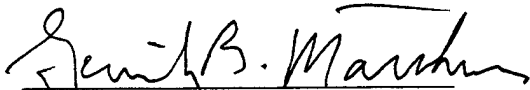
# THE PROBLEM OF INTERVENTION

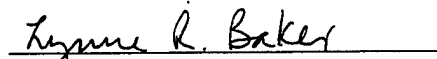
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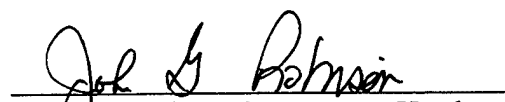
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## DEDICATION

To my patient and loving bride, Allison.

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## ABSTRACT

### THE PROBLEM OF INTERVENTION

MAY 1999

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As evidenced in Bosnia, Iraq, and now more vividly in Kosovo, the threat of force or sanctions, or even promised aid is not sufficient for resolving conflict or ending genocide. A military humanitarian intervention might be the only means of ending the suffering. Yet, we must ask ourselves, "is any intervention ever justified?" Historically, there are many different examples of intervention: some include outright invasion, while others involve covert support of one group, or state, over another. However, intervention does not always require direct application of force, for solely political motives – agencies often conduct interventions for humanitarian reasons. If such a humanitarian intervention is justified, then what about it makes it justified? Part of the difficulty of attempting to justify international intervention is that there is a vague and unusable definition of "intervention." Without a workable definition, there can be no basis for agreement on international laws covering interventions. Furthermore, contradicting legal precedents, different moral and prudential views, and a general lack of political will exacerbates the problem of intervention.

Nevertheless, I believe there is a workable definition for “intervention” and there are specific conditions for identifying an intervention as humanitarian. There also already exists a legal precedent for justified intervention under international law. Furthermore, there are ample moral grounds to argue for intervention – whether one believes an act morally right based on moral maxims or purely as a result of their consequences, one can make a moral argument for intervention. The question left to be answered is, “Is the intervention justified?” Using the Just War tenets, modified for intervention, provides the necessary conditions to answer the justification question. We can no longer stand idle while others suffer their inhuman fates. As Amir Pasic and Thomas G. Weiss wrote, “The moral barriers between ‘us’ and ‘them’ dissolve as we encounter naked humanity and are exposed to misery that is no longer mediated by special differences and distance.”<sup>1</sup> If an intervention is within legal bounds, morally obligatory, and further justified under Just Intervention tenets, then we, as the international community, should intervene.

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<sup>1</sup> Amir Pasic and Thomas G. Weiss, “Yugoslavia’s Wars and the Humanitarian Impulse,” Ethics and International Affairs 11 (1997): 123.



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## CHAPTER 1

### THE PROBLEM OF INTERVENTION

How should ye not fight for the cause of Allah and of the feeble among men and of women and of children who are crying! Our Lord! Bring us forth from out this town of which the people are oppressors! Oh, give us from Thy presence some protecting friend! Oh, give us from thy presence some defender!

– Quran<sup>1</sup>

#### Introduction

“Belgrade Steps Up Offensive in Kosovo and at Peace Talks,”<sup>2</sup> reads one of the recent headlines. Increasingly, the world seems to be becoming embroiled in the conflict in Kosovo. Seventeen days of peace talks were ineffective, which only postponed further discussions another three weeks. Since Serbian President Milosovic announced in a 1987 speech that Serbs living in the formerly autonomous province of Kosovo (Kosovo has been an autonomous province in Yugoslavia since 1945) should “claim it as their own land,” there has been fighting between the Serbian military and police forces and Kosovo rebels (the Kosovo Liberation Army, KLA). The KLA demands independence, while the Serbs want to incorporate Kosovo into a “greater Yugoslavia.” As with any conflict, the innocent people of Kosovo are caught in the middle of the conflict. More than two thousand civilians have been killed and tens of thousands have been forced from their homes by the fighting. After the massacres in Bosnia, several members of the international community were quick to denounce the new outbreak of fighting. They quickly prepared an international intervention to keep the peace in Kosovo and to prevent the genocide that occurred in Bosnia-Herzegovina. However, with Serb forces

continuing to ignore international demands to end the fighting, failing to withdraw their forces, and effectively blockading a 28,000 strong NATO implementation force into Kosovo, the planned peacekeeping intervention will have to wait. Intervention in Kosovo and Serbia by NATO air strikes, as well as other possible uses of force, seems the only way to force both sides back to the negotiation table.<sup>3</sup>

The major question is, "Is this intervention justified?" Although many might intuitively say that intervention to prevent "ethnic cleansing" is just, not everyone would agree. Russia has repeatedly denounced the use of force to bring the Serbs to diplomatic talks. Furthermore, there are two different interventions planned for Kosovo. One involves air strikes to force a diplomatic solution, while the other involves the use of international peacekeeping soldiers to separate the belligerents. While they are interrelated in the overall solution in Kosovo, each intervention has its own ends, methods, and intentions. Thus, the question concerning the justification of the intervention is more complicated than it first appears.

Historically, there are many different examples of intervention. Some interventions include outright invasion, while others involve covert support of one group, or state, over another. However, intervention does not always require direct application of force for solely political motives – groups often conduct interventions for humanitarian reasons. Some of these humanitarian interventions include delivering food to remote areas, aiding victims of natural disasters, and providing medical attention to victims of war, as well as forced separation of belligerents inherent in peace enforcement. Regardless of the intent of the intervention, inherent in every intervention is the violation

of another state's right to sovereignty. Interventions, by their nature, are interferences in the lives and government of a state.

The planned interventions into Kosovo have stated humanitarian intentions – both are intended to stop the fighting and prevent “ethnic cleansing.” Yet, is any intervention ever justified? If so, then what makes it justified? Perhaps, success defines a justified intervention; outcomes of interventions can be both positive and negative. There have been six (one was planned but not executed) UN sanctioned interventions in the period from 1990 to 1996.<sup>4</sup> All had humanitarian intents and objectives. Further, each involved international military forces. These six interventions have had various levels of success. Not all were completely successful, and some are still ongoing today. Yet, these interventions are commonly considered justified. Therefore, success alone is not sufficient to justify interventions.

#### Multi-Faceted Problem

The problem of international humanitarian intervention is multi-faceted. Like examining each facet of a gemstone, analyzing what, if anything, justifies intervention reveals several dilemmas. As I mentioned earlier, intervention entails a violation of another state's sovereignty. However, allowing an absolutist view of sovereignty is too restrictive. Putting genocide and mass destruction of life and property behind a veil of sovereignty would be, as one writer put it, “so flagrantly contrary to humanity that one could hardly know where to begin discussing it”<sup>5</sup>

However, the issue of sovereignty is not the only area of disagreement. It might be argued that international law has no authority over interventions. Furthermore, any

legal argument for intervention must overcome a long precedent of non-intervention, which has evolved from the writings of early seventeenth century, international jurists. Additionally, moral debate ranges over different ways of justifying intervention. Some say that the international community has a duty to intervene to protect universal human rights. Deontologists could argue that protecting human rights through intervention is a duty based on the moral principle of respect for all individuals. Yet, others outright deny the existence of these rights.

Consequentialists deny that there is a moral principle that presupposes the moral rightness of an act – they are concerned only with consequences of acts. However, some consequentialist might argue that an intervention is morally right because the intervention has the best consequences. For example, a consequentialist could argue that an intervention maximizes hedonic utility. Regardless of the argument, a pro-intervention consequentialist must address the many unseen consequences involved in an international intervention. Furthermore, what if we discover that it is our duty to intervene everywhere? Can we be over-committed? “Demands made by the international community were only honored when tied to effective uses of military force.”<sup>6</sup> Can any state afford to intervene in every justified case? Some philosophers (e.g. Teson) are “endeavoring to reorient the established conception of international law, returning more to the position adopted by Grotius, whereby intervention is always permitted, provided that the cause is just.”<sup>7</sup> I disagree. I think that only certain interventions are permitted, and only some of those permitted are obligatory.

Nevertheless, these questions must be tempered by the fact that many political realists do not think there is an international community and believe there is no

international morality. Obviously, any argument for intervention must show otherwise. However, even if there were sound and valid arguments for intervention, there seems to be no agreeable system to justify intervention. Each of us has an intuition about the justification of an intervention, but there is no accepted objective set of criteria that just interventions must fulfil. Emotionally, I am revolted by genocide and widespread suffering, which leads me to believe that certain interventions are justified. Thus, my project is to find some criteria for justifying interventions.

### The Project

To justify any intervention, I must first fully analyze the multi-faceted problem of intervention. From this analysis, I can construct arguments for intervention and outline the major objections to intervention. The question of justifiable intervention is too large to adequately address every facet here. Therefore, I will limit my focus to defining military humanitarian intervention, locating a legal precedent for intervention, providing a deontological argument and a consequential argument for intervention, and finally, formulating a framework for justifying intervention.

In order to provide arguments for intervention, and eventually provide a framework to justify certain interventions, I first need to define "intervention." Further, regardless of its humanitarian intentions and outcomes, I must determine which, if any, interventions are sanctioned by international law? Are NATO's planned interventions in accordance with international law? Some might argue that there is no international law.<sup>8</sup> However, whether or not an intervention is legal under international law, finding a legal precedent for intervention starts with discovering a functioning definition of "intervention."

Chapter 2 serves two purposes by defining “intervention” and finding a legal precedent for intervention. In this chapter, I first review several different interpretations of what constitutes intervention and determine what (if anything) qualifies as an international military intervention. Next, I focus on some proposals for what conditions a humanitarian intervention must satisfy. I then refine the definition of “intervention” that I will use throughout my analysis of justified intervention. At the end of this chapter, I also show an emerging legal precedent for intervention, in particular humanitarian intervention, based on a legal tradition to uphold the rights of people, the establishment of the United Nations (UN), and the development of international laws protecting human rights.

I propose that if there are human rights, then not only are some interventions legal, but we have corresponding duties to intervene *vis-à-vis* these rights.<sup>9</sup> Thus in Chapter 3, I focus on deontological arguments to intervene based on how some cases of massive human rights violations violate certain universal principles and how the agency becomes obligated.<sup>10</sup> In this chapter, I outline two ways that these corresponding duties arise from human rights. The first theory comprises certain *prima facie* duties generated by human rights. The second theory describes how duties arise from moral principles developed from a Kantian/Rawlsian view. Next, I use the analogy of the Good Samaritan to show how violations of human rights might impose obligations of intervention. Further, I discuss several notions of how the duties and rights of the agency (intervener) and the target (intervenee) are related. I show that some duties of the victims pass on to others, opening the way for intervention. Additionally, I discuss H.L.A. Hart’s distinctions between general and specific duties, and present a specific form of “Guardian



Relationship” that might address how the international community acquires the duty to intervene.

Also in Chapter 3, I discuss how political realists such as Niebuhr, Morgenthau, and Kennan propose that international intervention could never be a duty.<sup>11</sup> Realists believe that there is no such thing as an international morality because there is no international society. Thus, for a realist, the decision to intervene or not, while politically important, is morally irrelevant. Disagreeing with these realist beliefs, I show that international interdependence has transformed a world of separate states into an informal “international community.” In addition, I discuss how intervention might be to a realist’s advantage because it leads to politically desirable results of increased stability and international credibility.

During my search to justify intervention, I have discovered little consequentialist discussion regarding intervention. It would be unfair to report that recent literature has ignored the various consequences of intervention. Rather, these discussions have focused on theories that, for example, conclude that intervention is a morally right action or that failing to stop “ethnic cleansing” and genocide is morally wrong based on accepting or violating certain moral laws. However, the obligation to intervene need not be entirely a question of moral law. In Chapter 4, I discuss an argument that the international community may have an obligation to intervene based solely on the consequences (or resulting state of affairs).<sup>12</sup>

To show that intervention could be consequentially obligatory, I first outline a consequentialist theory involving possible worlds. Next, I describe how to evaluate the consequences of intervention using this theory. Then, I discuss some examples to

demonstrate how an intervention would be obligatory. Additionally, I address some potential shortcomings of a consequentialist view, including an objection of potential unforeseen consequences and the problem of providing continuing aid.

I also discuss why the following often heard objection is invalid.

If one ought to intervene in country A, one ought to intervene in country B, C, D, E, .... It would be impossible to intervene in A, B, C, D, E ....  
One only ought to do what one can do. ("Ought" presupposes "can.")  
Therefore, one ought not to intervene in country A.<sup>13</sup>

Intervention in A does not entail intervention in B, C, D, E, .... Furthermore, not every situation warrants an intervention. Some interventions are obligatory while others are not. In Chapter 4, whether an intervention is obligatory is based on the consequences of that intervention. Accordingly, some interventions will have "better" consequences than others. By using a consequentialist theory, we can avoid some of the problems of a deontological argument (e.g. some minor human rights violations obligating numerous costly interventions) and we can certify when an intervention is obligatory.

Chapter 5 outlines a framework for justifying intervention, and discusses the problem of sovereignty. Instead of inventing some new criteria of intervention, I propose modifying the tenets of the Just War (*bellum justum*) Tradition to justify intervention. Using the Just War Tradition has several important advantages over creating a new framework: its use is historically documented, socially and theologically acceptable, and it has been successful in justifying other sovereignty infringements. The tenets of the Just War Tradition provide a framework where the international community can determine when a state has forfeited its right to sovereignty and when international forces

can conduct a humanitarian intervention. By justifying their actions through the Just War Tradition, the international community can selectively intervene in other states.

To show that the *bellum justum* tenets provide justification for intervention, I begin with a brief explanation of the Just War Tradition, including both the conditions for deciding to wage war (*jus ad bellum*) and the conditions for the conduct of war (*jus in bello*). Next, I examine each tenet and demonstrate how the Just War Tradition, specifically the conditions for *jus ad bellum*, can be applied to intervention. Furthermore, I show that the tenets that govern conduct in war (*jus in bello*) also applies to intervening forces. Throughout this chapter, I discuss some objections that have been raised against the Just War Tradition tenets, in addition to some objections that opponents of intervention might raise in opposition to using the Just War Tradition as a framework for intervention. Specifically, I address the limitations of the UN as a legitimate authority. Finally, I discuss the objection regarding intervention as a violation of sovereignty and show how states sometimes forfeit this right. I do not propose eliminating the right to sovereignty because I feel it is fundamental for normal international interaction. However, gross rights violations, massacres, and an inability to provide assistance to one's own population reduces the absolute right of sovereignty. The refusal or inability of states to assist their populous legally and morally opens their borders to intervention.

### Conclusion

Since World War II, the international community has witnessed large amounts of human suffering. Hitler's plan to systematically erase all memory of the European Jewish population has been repeated on numerous occasions in nearly every corner of the world. Cambodia, Rwanda, Uganda, Angola, Bosnia – the countries are different but the

suffering remains the same. Instead of travel posters of exotic places full of life and beauty, we see pictures of human depredation and read headlines about murder and genocide. Sadly, economic aid, sanctions, and threatened air strikes have done little to mediate the conflicts around the world. Furthermore, it is possible that international inaction is a result of our inability to justify certain interventions.

The international community professed interests and actions beyond their real willingness to intervene in the former Yugoslavia, which gave hope to the victims of aggression that the West would eventually come to their aid.... Moreover, symbolic use of military force only highlights the limits of community interest.<sup>14</sup>

As evidenced in Bosnia, Iraq, and now Kosovo, the threat of force or sanctions, or even promised aid is not sufficient for resolving conflict and ending genocide. Intervention might be the only means of ending the suffering. Nevertheless, part of the difficulty that prevents international intervention is a vague and unusable definition of "intervention." Without such a workable definition, there can be no basis for agreement on international laws covering interventions.

I believe there is a workable definition for "intervention" and that there already exists a legal precedent for justified intervention under international law. Further, whether one believes an act morally right based on moral maxims or purely as a result of their consequences, one can make a moral argument for intervention. The question left to be answered is, "Is the intervention justified?" Using the Just War tenets, modified for intervention, provides the necessary conditions to answer the justification question. We can no longer stand idle while others suffer their inhuman fates. "The moral barriers between 'us' and 'them' dissolve as we encounter naked humanity and are exposed to

misery that is no longer mediated by special differences and distance.”<sup>15</sup> If an intervention is within legal bounds, morally obligatory, and further justified under Just Intervention tenets, then we, as the international community, should intervene.

## Notes

<sup>1</sup> Quran, 4:75.

<sup>2</sup> Peter Finn, "Belgrade Steps Up Offensive in Kosovo And at Peace Talks," Washington Post, 17 March 1999.

<sup>3</sup> See Craig R. Whitney, "From Bosnia to Kosovo, U.S. Point Man for Peace," The New York Times, 23 February 1999; Tom Heneghan, "Serb Bid to Change Kosovo Plan Rejected," Reuters, 16 March 1999; and Michael T. Kaufman, "Meet Kosovo, the World's Biggest Little Tinderbox," The New York Times, 5 July 1998.

<sup>4</sup> Recent humanitarian interventions 1990 – 1996: (1) Economic Community of African States (ECOWAS) in Liberia in August 1990 (SCR 866); (2) Operation Provide Comfort and Operation Southern Watch in Iraq from April 1991 to today (SCR678, 688); (3) UNPROFOR in Bosnia in August 1992 (SCR 770); (4) Operation Restore Hope in Somalia in December 1992 (SCR 794); (5) Operation Turquoise in Rwanda in June 1994 (SCR 929); (6) Operation Uphold Democracy in Haiti in September 1994 (SCR 867); and the abandoned intervention into Eastern Zaire planned for November 1996. Oliver Ramsbotham, "Humanitarian Intervention: The Contemporary Debate," in Some Corner of a Foreign Field, ed. Roger Williamson (New York: St. Martin's Press, Inc., 1998), 64.

<sup>5</sup> Barrie Paskins, "Intervention and Virtue," in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 117.

<sup>6</sup> Kori N. Schake, "The Breakup of Yugoslavia" in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 110.

<sup>7</sup> Richard Little, "Recent Literature on Intervention and Non-Intervention," in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 25.

<sup>8</sup> J. E. Hare and Carey B. Joynt, Ethics and International Affairs (New York: St. Martin's Press, 1982), 22-49 (esp. 29, 34, 43). Also, see page 169.

<sup>9</sup> Kok-Chor Tan, "Military Intervention as a Moral Duty," Public Affairs vol. 9 no. 1 (Jan 1995): 30-1.

<sup>10</sup> R. M. Hare, "Rules of War and Moral Reasoning," Philosophy and Public Affairs (Winter 1972): 174. Hare ascribes a deontological title to Anscombe, Nagel, and Ross. See Anscombe's "War and Murder," in War and Morality, ed. Richard A. Wasserstrom (Belmont, CA: Wadsworth Pub. Co., 1970), 42-53, and Nagel's "War and Massacre," Philosophy and Public Affairs 1, no. 2 (1972): 123-144.

<sup>11</sup> Hare and Joynt, 29, 34, and 43. Also see Leo McCarthy, "International Anarchy, Realism and Non-Intervention," in Political Theory, International Relations and

the Ethics of Intervention, ed. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 75-90.

<sup>12</sup> In my project, I am not attempting to compare deontological and consequential theories. I leave the debate on which view is correct for others. Nevertheless, each view provides different conditions for obligating intervention. And, although each has its difficulties, one can create both deontological and consequentialist arguments for intervention.

<sup>13</sup> David Fisher, "Some Corner of a Foreign Field," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 33.

<sup>14</sup> Schake, 110.

<sup>15</sup> Amir Pasic and Thomas G. Weiss, "Yugoslavia's Wars and the Humanitarian Impulse," Ethics and International Affairs 11 (1997): 123.

## CHAPTER 2

### WHAT IS INTERVENTION?

#### Introduction

In the former East Pakistan of the 1970's, Pakistani government soldiers were involved in the torture, rape, and killing of thousands of Bengali. Furthermore, the oppression and killings were not random acts of violence; Pakistani officers used lists of political, cultural, and intellectual leaders to hunt down and eliminate any potential opposition. Faced with hunger, persecution, and massacre, millions of Bengali people were forced to chose the uncertainty of an unknown future and fled their homelands – flooding the borders of India. The region was sliding into chaos. The Bengali cause was brought before the United Nations (UN), but no action was taken. Diplomacy also failed as talks between India, Pakistan, and the Bengali rebels stagnated. Faced with millions of refugees and a crisis that could de-stabilize the region, India invaded in December 1971.<sup>1</sup>

The invasion of East Pakistan by India is a clear example of a justified intervention. Historically, however, intervention has not always been so clear and easy to identify. There are many faces to intervention. The Argentinean invasion of the Falkland Islands during 1982, the civil war in El Salvador from 1979 to 1990, the Gulf War during 1991, the August 2, 1914, German invasion of Luxembourg, the Vietnam War (1965-75), and the UN deployment to Angola (1989-1995) all have something in common – they are all examples of international military intervention of one type or another.

While each of these interventions involved the use of force by one state penetrating the boundaries of another state, each of these examples is different from the



others in intent and method as well as in scope. Some, like the UN Angola Verification Mission (UNAVEM III), were plainly intended for humanitarian purposes. UNAVEM III involved the deployment of 7,000 soldiers from eight states into Angola to monitor the cease-fire and oversee the peace process.<sup>2</sup> Other interventions had less benevolent intentions. Many interventions were intended to regain lost territory (the Falkland Islands war), establish forward staging areas for further invasion (1914 German invasion of Luxembourg), or to prevent the spread of another adversarial government (the Vietnam War and the major super-powers' involvement in the civil war in El Salvador). Some invasion-like interventions have obvious political or military motives, while the motives of others (for example the super-power strategic struggle of the Cold War played out in the Third World) were not so obvious.

Historically, we tend to combine all international military actions into the category of intervention, whether they are motivated by humanitarian or political reasons. With so many different types of military actions occurring around the world, it is sometimes difficult to identify what exactly constitutes intervention *per se*. Additionally, since my project is to identify a process to justify certain interventions, which (if any) interventions might be justified? How can we tell? Are there certain conditions that military action must satisfy to qualify as a specific type of intervention?

Once we identify what constitutes an intervention, adding the condition of identifying a humanitarian intent further complicates the task of defining intervention. Humanitarian intentions might range from assisting in medicinal distribution, to protecting human rights, and to (as some may suggest) the pursuit of human-rights violators. While states often use humanitarian intentions as an excuse to mask other,

perhaps self-serving reasons<sup>3</sup>, the Indian invasion of East Pakistan is a good example of one state intervening in another primarily to stop human rights violations. The invasion lasted only two weeks, lending further credence to India's claim that the intervention was intended only for humanitarian objectives. India quickly defeated the Pakistani forces, ended the killings, and withdrew back across her border.

In order to provide some arguments for humanitarian military intervention and eventually provide a framework to justify certain interventions, we first need to define intervention. Further, regardless of its humanitarian intentions and outcomes, we must determine which, if any, interventions are sanctioned by international law. Was India's intervention in accordance with international law? Some might argue (as Niebuhr, Morgenthau, and Kennan would have) that international intervention is never legal.<sup>4</sup> Regardless of whether or not an intervention can occur within the framework of international law, finding a legal precedent for intervention starts with discovering a working definition of "intervention."

This chapter is divided into two parts – defining "intervention" and the conditions of humanitarian intervention, and finding a legal precedent for intervention. First, I will review the various definitions of "intervention" to determine what qualifies as an international, military intervention. I will then refine the definition of "intervention" that I will use throughout my analysis of the problem of justified intervention. Additionally, I will analyze various proposals for what conditions constitute humanitarian intervention. I will also discuss the use of soldiers in humanitarian interventions, including the use of force. Armed with this definition of "intervention" and the criteria for humanitarian

intervention, I will also show an emerging legal precedent for intervention and in particular humanitarian interventions.

### Defining "Intervention"

Part of the troublesome task of justifying intervention – in particular humanitarian intervention – arises from differing definitions of "intervention." The problem of defining "intervention" is exacerbated because (in general) intervention can occur at several levels. Intervention can occur between individuals, between a state (or group, organization, etc.) and individuals, and between states. One definition of "intervention" might rely upon how one might view the rights of an individual versus the rights of states. Additionally, there are differing views as to how these individual and collective rights (if they exist) interact. However, for the purposes of this project, I will focus on interventions between states. Disagreement on what constitutes intervention has uncovered the additional problem of finding non-tendentious conditions for what constitutes a justified intervention.

In order to define "intervention," I will start with some common notions of intervention. There are several readily available definitions of "intervention." The American Heritage Dictionary defines intervene as, "to come in or between so as to hinder or to modify," or "to interfere, usually through force or threat of force, in the affairs of another nation." The dictionary defines intervention as, "the policy or practice of intervening in the affairs of another sovereign state."<sup>5</sup> According to these definitions, the interventions mentioned in the last section (El Salvador, Falklands, Luxembourg, etc.) are all interventions. Thus, from these definitions we can derive some common traits of intervention. Interventions have states (or groups) that are interveners and states (or

groups) in whose affairs others forcibly interfere. For consistency with intervention literature, and following terminology proffered by John Vincent, I shall call the former *agency* and the latter the *target*.<sup>6</sup> Raymond Plant seems to concur with the dictionary definition. He writes, “[intervention is] an action, or inaction, or failure to complete previous actions with the intention of influencing the domestic policy of a particular state.”<sup>7</sup>

Another dictionary, the Webster’s Third New International Dictionary, offers a longer definition – which seems more precise.

Intervene – to interfere usu. by force or threat of force in another nation’s domestic affairs in order to protect the lives or property of the nationals of the interfering nation or to further some other purpose deemed vital to its welfare.<sup>8</sup>

From Webster’s definition, we might expand the conditions of intervention. Besides the agency and the target, we must consider the *method* of intervention; two examples of the method are coercion through the actual direct use of force and coercion by a show of force. (The quantity of this method of intervention would be the force level). In the aforementioned intervention examples at the beginning of this chapter, the method of intervention always included the deployment and use of military forces. Recent examples of show of force interventions include the oil embargo of Iraq and the threat of NATO air strikes to stop Serbian advance in Kosovo (Operation Deliberate Falcon).

Furthermore, Webster’s definition introduces the idea of intent, or *purpose*, for intervention. Here, according to Webster’s there are only two purposes: to protect nationals or to protect some deemed vital interests. Interventions in El Salvador, the

Falklands, Luxembourg, and the Gulf War had the common purpose of protecting supposed vital interests within the country or region of the intervention. There are many other historical examples of intervention to protect some interest or to gain further influence. Some such interventions involved the right of self-protection (or self-defense), while others involved an attempt to influence international prestige. For example, “traditionally, arms aid has been used by states to build up allies and substitute arms for the use of one’s own forces, to influence the balance of power in an area of the world where important interests were involved....”<sup>9</sup> The theory that an intervention’s purpose is to protect state interest is not a twentieth century development. Even in the nineteenth century, “after the Napoleonic wars, ... Austria, Prussia and Russia ... wanted to establish a general right of intervention into any revolutionary situation.”<sup>10</sup>

Thus far we have uncovered several common features of intervention: agency, target, method, and purpose. Therefore, to proceed to what constitutes intervention, I will define “intervention,” INT, as follows:

INT =<sub>df</sub> an agency interference, by force or show of force, into the affairs of a target to i) protect the agency’s nationals or ii) protect interests considered vital to the agency.

Political theorists Hare and Joynt would agree with this definition, INT. They might further conjecture that an intervention that meets the definition, INT, would be justified. They write, “in short, there is a justified right of intervention only if some other country acts to impose or depose governments by force or by subversion and if the evidence for such interventions is clear.”<sup>11</sup> Yet, Hare and Joynt’s conclusion, that when an intervention meets the criteria of INT it is justified, may be premature. If INT alone

justifies interventions, many interventions that intuitively seemed unjustified (such as the German invasion into Luxembourg) would now be justified.

INT seems incomplete. Other theorists have offered other purposes for intervention. Two other purposes for intervention frequently mentioned are supporting a succession and counter-intervention. Mill, although a supporter of non-intervention, proposed these conditions for intervention. He allowed intervention "where a political community within existing state borders is struggling for independence" (secession or national liberation), and "where a foreign power has already intervened" (counter-intervention).<sup>12</sup> An instance of intervention on behalf of succession occurred as France blockaded the British fleet and provided other assistance during the American Revolutionary War.

Examples of counter-intervention, however, are harder to locate. Although counter-intervention can be viewed as merely intervening into a target because the agency's opposition has already intervened, cases of actual counter-intervention are rare. Where does one side's intervention end and another's begin? Some might argue that historical examples of counter-intervention include China's entering the Korean War, El Salvador's civil war, and the involvement of the United States in Vietnam. In these examples, one agency counter-intervened to stop the intervention of a different, competing agency.

However, assuming counter-intervention is a valid purpose of intervention, it seems that INT needs modification to include the additional purposes of intervening during succession and of counter-intervention. Thus, INT becomes

INT' =<sub>df</sub> an agency interference, by force or show of force, into the affairs of a target i) to protect the agency's nationals, ii) to protect interests considered vital to the agency, iii) to support succession, or iv) for counter-intervention.

The correctness of INT' seems to be confirmed when one checks current literature on intervention. In Richard Little's review of the intervention literature, he suggests that the purposes for intervention include: (1) the "inherent right of self-defense as enshrined in the UN Charter," (2) counter-intervention, where "it is presupposed that if the state has gone to the support of a party in a domestic dispute within another state, then the way is opened for a second state to intervene legitimately by supplying assistance to the opposite side of the dispute", or (3) "in order to protect its own citizens."<sup>13</sup>

It seems as though we have uncovered the elusive definition of "intervention," INT'. However, since the purpose is also to determine what constitutes a humanitarian intervention, not merely intervention in general, we must review the conditions that must be satisfied to make an intervention count as humanitarian. Obviously, not all of the examples of intervention I have discussed up to this point have a humanitarian method. Nor, do many of them seem to have an overt humanitarian purpose. Thus, in the next section, I will attempt to locate and discuss the conditions for humanitarian intervention.

#### A Humanitarian Intervention

Ramsbotham and Woodhouse have identified several humanitarian criterion that an intervention must satisfy to be declared "humanitarian." They include: (a) a humanitarian cause, (b) a declared humanitarian end, (c) that the agency worked impartiality towards this end (a humanitarian approach), (d) a humanitarian means, and

(e) a humanitarian outcome.<sup>14</sup> The Ramsbotham and Woodhouse conditions provide a good initial framework to discuss and define humanitarian intervention.

The foremost requirement for any intervention to be classified as humanitarian is that it must have a humanitarian cause or purpose. The purpose outlines what the agency hopes to accomplish by intervening and answers the question of “Why intervene?” Only when an agency’s intentions include purposes such as stopping genocide, feeding refugees, providing medicine, or ending the fighting can the intervention be declared humanitarian. Furthermore, without some humanitarian purpose, interventions that result in the protection of human rights are only accidentally humanitarian. Worse, human rights violations that are inadvertently thwarted by the crackdown of an oppressive victor might mistakenly be labeled as humanitarian. Thus, humanitarian intervention must have a humanitarian purpose. Intervening with a humanitarian purpose specifies the justification for the humanitarian intervention and helps to focus the agency on the tasks that they must accomplish by clarifying the reasons for the intervention.

Another technique for focussing the efforts of the intervening agency and its deployed forces is actually to declare a humanitarian end. The end differs from the purpose because the end establishes the concrete objectives the agency will meet. The end forecasts “what things will look like” when the intervention is complete. Declaring a humanitarian end places a mark on the wall, encouraging all members of the agency to ensure that each sub-task of the intervention meets with the specified humanitarian purpose and that the total effort leads to the announced humanitarian end. Furthermore, declaring the humanitarian end assists the agency to garner public and international support for the intervention by proclaiming the intended results.



Besides a humanitarian purpose and end, humanitarian interventions must be accomplished through humanitarian means. To do less would detract from the humanitarian purpose and possibly tarnish the accomplishments of the humanitarian end. The humanitarian end may be altered or diminished; or worse, the end might be completely undermined by not enforcing humanitarian means. Using humanitarian means is analogous to following the tenets of proportionality and discrimination under the theory of *jus in bello* (which I will discuss later in Chapter 5). As some individuals (i.e. O'Brien) have suggested, conduct during the fighting affects the justification of war.<sup>15</sup> Similarly, only through humanitarian means can one be justified in claiming that an intervention is or was humanitarian.

A further condition of humanitarian intervention that Ramsbotham and Woodhouse apply is that the agency must work towards the humanitarian end with impartiality. They call this condition a humanitarian approach. A good example of an agency that follows the humanitarian approach is the *Médecins Sans Frontières*. The *Médecins Sans Frontières* is an international organization who, in 1993-4, had a budget of \$187 million and employed over 2,000 expatriate personnel working in sixty-three countries practicing and distributing medicine. Founded by two doctors in 1971, *Médecins Sans Frontières* provides medical services and medicine in conflict-ridden regions to any state affected by the conflict regardless of affiliation or governmental consent.<sup>16</sup>

One must say, however, that the requirement of a humanitarian approach (impartiality) is rarely satisfied. In the no-fly zone over northern and southern Iraq, NATO air forces have set aside their impartiality in an attempt to protect the human

rights of the Kurds of northern Iraq and the Shiites of southern Iraq. In other interventions, partiality is unavoidable. In Bosnia, all sides have violated the human rights of one another within the different ethnic and national boundaries. However, the Serbian forces (the strongest in the region) have been accused of the majority of the human rights violations. In order to end the violence in the region of Bosnia-Herzegovina, NATO conducted air strikes against Serbian heavy weapons and ammunition positions to reinforce the Serbian delegation's commitment to a diplomatic cease-fire. Abandoning the criteria of impartiality might be considered rash. Certainly, it would be ideal to perform all humanitarian interventions with impartiality. However, in order to end the human rights violations in Bosnia-Herzegovina it was necessary to act against the stronger state. Being impartial in distributing aid does not entail being impartial in applying force to end a conflict. Requiring agencies to be impartial might inhibit the rapid cessation of hostilities. For this reason, I will not include the trait of a humanitarian approach as a condition of humanitarian intervention.

The success of a humanitarian intervention is determined by whether the outcome is humanitarian. Right intentions and the right means alone will not ensure a successful outcome to the intervention operation. Additionally, declaring a humanitarian end is insufficient without fulfilling that end. All the hard work, countless hours of planning and labor, and likely loss of life will not be in vain if the agency reaches their stated end and the outcome is a humanitarian one. However, no matter how humanitarian the motives of the peacekeeping forces and the international community are, they might still be blamed for their lack of effort if the outcome is not humanitarian. The "end may not

justify the means,” but the international community judges a successful humanitarian intervention by the actual outcome.

In summary, the conditions for declaring an intervention as humanitarian include (a) humanitarian purpose, (b) declared humanitarian end, (c) humanitarian means, and (d) humanitarian outcome.<sup>17</sup> One could summarize these humanitarian conditions into another purpose for the definition of “intervention.” Adding a fifth possible humanitarian purpose to INT' yields

INT'' =<sub>df</sub> an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights.

Applying the Ramsbotham and Woodhouse humanitarian conditions to the definition of “intervention,” INT'', results in the following formulation of a humanitarian-type intervention.

An intervention is humanitarian (INT<sub>h</sub>) iff

(1) it is an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights; and

(2) this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means.

Other theorists propose conditions for humanitarian intervention similar in content to INT<sub>h</sub>. Mill not only allowed intervention “where a political community within existing states borders is struggling for independence” or “where a foreign power has already intervened,” he also foreshadowed the contemporary notion of a humanitarian intervention. He felt that intervention into a “protracted civil war in which there seemed to be no prospect of a restoration to order”<sup>18</sup> was allowed to stabilize the region. Although not necessarily a humanitarian cause, Mill’s proposed interventions into civil wars would result in the cessation of hostilities (a humanitarian outcome).

The Encyclopedia of War and Ethics defines “humanitarian intervention” as, “assistance provided to people within a nation by outsiders without the consent of the national government.”<sup>19</sup> Yet, is any consent required? Who can authorize humanitarian interventions? Theories of humanitarian intervention differ on who can authorize the intervention. Some philosophers, such as Tan, might argue that there does not need to be an intervening authority because there is a “*prima facie* moral obligation to ensure the effective exercise of [human] rights.”<sup>20</sup> Verwey writes that humanitarian intervention is

The threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights, in particular the right to life of persons, regardless of their nationality, such protecting taking place *neither upon authorization by relevant organs of the United Nations* nor with the permission by the legitimate government of the target state. [My emphasis].<sup>21</sup>

Ramsbotham also leaves a requirement concerning the intervening authority out of his formulation of what constitutes humanitarian intervention. His third characteristic of humanitarian intervention is that it “took the form of self-help by states (in strict readings

collective action by the UN Security Council was not intervention).”<sup>22</sup> Lack of an intervening authority does not alter the definition of “intervention;” however, it may hinder or even preclude justifying certain incidents of humanitarian intervention where the purpose or means was controversial. Additionally, apart from self-regulation and international peer pressure, only a body of the intervening authority can ensure that the declared end and the means of intervention are indeed humanitarian. I will leave a lengthy discussion of the legitimate authority for intervention for Chapter 5. For now, I will assume that humanitarian intervention must have some internationally recognized authority.

#### Definition of Intervention and Humanitarian Intervention

Currently the only international body of recognized authority that could fulfil the role of an internationally recognized authority, where each state is a voting member, is the United Nations. Adding a clause that includes an intervening authority such as the United Nations further modifies  $INT_h$ . Humanitarian intervention now becomes

An intervention is humanitarian ( $INT_h$ ) iff

(1) it is an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency’s nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights; and

(2) this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means; and

(3) this interference is authorized by relevant organs of the internationally recognized authority where states are voting members (e.g. the United Nations.)

Although  $INT_h$  seems to capture the essential elements of what constitutes any military humanitarian intervention, it has a clumsy feel. The difficulty with  $INT_h$  is that it is complicated and that it has potential conflicts of interest among the purposes of (i) protecting the agency's nationals, (ii) protecting interests considered vital to the agency, (iii) supporting succession, (iv) or for counter-intervention, with the clearer humanitarian purpose of (v) preventing a serious violation of fundamental human rights. Purpose (v) seems to be the overriding criteria for allowing a humanitarian intervention. By intending to prevent or halt a serious violation of fundamental human rights, an agency will fulfil the requirement of having a humanitarian cause. Nevertheless, as I discussed earlier and history has shown, not all interventions are humanitarian in nature. Thus, to distinguish between humanitarian interventions and interventions in general, and for discovering whether we can justify intervention, I will define "intervention" as

Intervention =<sub>df</sub> an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights.

In addition, I will define a "humanitarian intervention" as

Humanitarian Intervention =<sub>df</sub> an intervention authorized by relevant organs of the internationally recognized authority where states are voting members for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights; such that this interference has (a) a

humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means.

In addition, one could further divide humanitarian intervention into categories – Coercive and Non-coercive Intervention. Coercive Interventions include both (a) forcible military and (b) coercive non-military intervention, while Non-coercive Interventions include (c) non-forcible military intervention, (d) non-coercive, non-military intervention, and (e) transnational, intergovernmental, and non-governmental modes of non-forcible intervention.<sup>23</sup>

Since I am specifically concerned with the use of military force in either a coercive or non-coercive role, I further explicate “humanitarian intervention” to involve military forces. Some examples of these interventions include distributing aid, coercive air strikes, and other non-traditional categories of military humanitarian intervention. These include peace making, peacekeeping, and peace enforcement. Peacekeeping typically involves the use of “neutral” forces, with the mutual consent of the parties (within the target), to maintain a cease-fire. Peace enforcement is the forcible interposition of military forces between warring factions. Peace enforcement does not require consent because “the political, military and legal [means employed] are tantamount to an international declaration of war against one or more parties to the conflict.”<sup>24</sup> Peace making is the initial phases of nation building. It requires full active participation of target party(s), and it focuses on redress of wrongs, establishing boundaries, and restoring government infrastructures.<sup>25</sup> Therefore, for continuity throughout the remainder of this project, I will use “humanitarian intervention” to explicate any of these humanitarian-type military supported interventions.

### A Military Intervention?

The concept of using soldiers, whose primary role involves killing their enemy in combat, to conduct humanitarian interventions may seem strange at first. However, many interventions, intended only to distribute food, medicine, and clean water, have been conducted by the military or with the help of the military. Consider the examples of Operation Turquoise in Rwanda and Operation Restore Hope in Somalia. Both were humanitarian relief interventions that required multinational military forces to ensure that supplies were distributed evenly, fairly, and to remote areas.

Few would argue against using military forces to deliver supplies to remote areas for disaster relief. Often, armies are mobilized at home to provide relief from flooding, hurricanes, drought, and other natural disasters. Yet, some people strongly disagree with sending forces overseas to conduct these same operations in other countries. This is especially apparent when there is the threat of possible casualties to the intervening forces during their mission. Yet, to ignore the plight of others would be intolerable.

Of course, “[m]ilitary forces alone are an inadequate tool for the essential tasks of resolution....”<sup>26</sup> Nevertheless, although not their primary mission, soldiers are ideally suited for these humanitarian interventions involving supply distribution. The structure of military forces lends itself to humanitarian interventions. Armies generally have established and well rehearsed command structures. In addition, military forces are well trained in the distribution and transportation of different kinds of supplies. They also have the vehicles and capacity for logistics distribution.



However, what about peacekeeping operations and other humanitarian interventions such as peace enforcement? Not only do these interventions involve the presence of military forces; they also often require the use of force. Even many of those who support the use of soldiers in humanitarian interventions involved in providing logistical relief, hesitate to “put our soldiers in harm’s way.” However, the situation in the target state may prevent the distribution of supplies. Soldiers are trained to adapt in inhospitable and even hostile situations, likely to be found where intervention is needed most. “Soldiers are not like Peace Corps volunteers or Fullbright scholars or USIA musicians and lecturers – who should not, indeed, be sent overseas to dangerous places. Soldiers are destined for dangerous places, and they should know that.”<sup>27</sup> Furthermore, feeding refugees will not end atrocities like genocide and ethnic cleansing. “Stopping the violence and preventing its recurrence are the first and most essential tasks during the mitigation phase of the intervention cycle. Without these, other forms of intervention will be premature and likely to fail.”<sup>28</sup> When diplomacy fails, sometimes only the use of force can end a conflict. Furthermore, a show of force alone often does not end atrocities. “Demands made by the international community were only honored when tied to effective uses of military force.”<sup>29</sup> Sometimes, as the EU is arguing in Kosovo, force is required to end genocide. Recall that former UN Secretary General Dag Hammerskold said, “peacekeeping is not a job for soldiers, but only a soldier can do it.”<sup>30</sup>

Ideally, international police forces would be used for intervention; however, none exist. Increasingly, the UN has sponsored humanitarian interventions using forces provided by member states under UN control. Yet, often these interventions have limited effectiveness, because of the differences between the members’ forces.

For example, many consider the UN capable of peace operations across the full spectrum of mitigative tasks. Although extremely useful for consensual peacekeeping and peace making operations, recent cases in Somalia and Bosnia illustrate the limits to the effective use of the UN (blue helmet) forces for peace enforcement operations. This is because of the ad hoc nature of UN force structure; lack of organic equipment, and bifurcated lines of command and control render UN forces unresponsive, inflexible, and relatively ineffective as combatants. Semi restrictive rules of engagement can allow fighting forces to retain efficiency as peace enforcers; however, the violent nature of unabated conflict requires combat efficiencies not found within the UN structure.<sup>31</sup>

Whether or not they are more successful in fulfilling a humanitarian outcome, interventions by formally trained military alliances (e.g. the NATO intervention in Kosovo) appear to be more efficient than the ad hoc formation of UN forces. Nevertheless, any intervention, like any military operation, has inherent possibility for casualties. Should the fear of casualties keep us from doing our duty, which is stopping the depredations and genocide? The international community's delay in conducting an intervention in Bosnia and their withdrawal of forces from Somalia to open our eyes to the dyer consequences of our hesitation. General Mladic, leader of the Bosnian-Serb forces involved in the "ethnic cleansing" in Bosnia-Herzegovina recognized and capitalized on this fear. Speaking about why the international community had not intervened in Bosnia, Mladic said, "the western countries have learned they cannot require their own children to realize goals outside their homelands."<sup>32</sup>

Not every humanitarian intervention requires the use of military forces. However, history has shown that there are times and there are situations where the only way to end

gross violations is by use of force. We cannot stand idle while these atrocities take place. Besides the fact that innocents are loosing their human rights, these massive violations of human rights destabilize a region as much as any war. Ignoring these threats to peace is akin to abandoning our fellow man. We must ask ourselves, "[I]s this a cause for which we are prepared to see [our] soldiers die? If this question gets an affirmative answer, then we cannot panic when the first soldier or the first significant number of soldiers, like the eighteen infantrymen in Somalia, are killed in a firefight."<sup>33</sup>

### A Legal Precedent for Intervention

Part of the force of the first clause in the definition of "humanitarian intervention," "upon authorization by relevant organs of the United Nations," is the requirement for a legal sanction for intervention through the auspices of the United Nations. One should note, however, that there is also a competing long-standing tradition of non-intervention in the legal community, which dates back to the eighteenth century. In 1758, one of the fathers of international law, de Vattel wrote, "states have rights to legislate and administer justice without interference from outside their borders."<sup>34</sup> This idea was further upheld after World War II in the International Court of Justice in 1945. In its decision of the Corfu Channel Case the court found that, "the alleged right of intervention [has] ... given rise to most serious abuses and such cannot, whatever be the defects in international organization, find a place in international law."<sup>35</sup>

Some theorists who support intervention find it futile to locate a legal precedent for intervention in international law. Haas thinks that interventions are not justified through international law. He said that justified interventions are "multi-laterally sanctioned acts imposing unwarranted behavior on a state, not justified by legal precedent

but legitimized by the twin pillars of global moral consensus and reasonable effectiveness.”<sup>36</sup> Indeed, a legal precedent for intervention is problematic.

The elusive definition of “intervention,” and determining what (if anything) justifies intervention, hinder the passage of international legislation concerning allowable interventions. Yet, to abandon the search for legal grounding for intervention seems imprudent. As customary law suggests, the use of forcible self-help to protect human rights is allowable, so might providing assistance to bolster another’s self-help to protect human rights be allowable.

For many years the notion of “forcible humanitarian intervention was below the threshold of Article 2(4), because it was strictly limited and temporary, and did not threaten the ‘territorial integrity or political independence’ of the target state.”<sup>37</sup> A legal precedence was not deemed necessary. Nevertheless, embedded in the very Charter of the United Nations are the legal writings supporting justified interventions. Protection of human rights is one of the *raison d’être* of the United Nations.

#### The United Nations

Fundamental to the founding of the United Nations (UN) were recognition of human rights and an international effort to protect these human rights in the aftermath of the horrors of the Nazi concentration camps. In the first Chapter, outlining the purpose of the UN, Article 1(3) reads, “the purposes of the United Nations are ... achieve international cooperation in ... encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>38</sup> Pursuant to protecting human rights was a firm affirmation to maintain stability and peace between

nations. To ensure (and if need be enforce) interstate stability and peace, the Security Council was formed from the main body of the UN.<sup>39</sup>

As India's intervention in East Pakistan and the conflict in Bosnia-Herzegovina have demonstrated, regional conflicts – including civil wars – rarely remain isolated and tend to spread beyond local borders. Often conflicts involve neighboring states and lead to a de-stabilization of the region. Even so called “internal disputes,” such as the Rwandan fighting between the Tutsi and Hutu, often lead to massacres causing hundreds of thousands of refugees to flee across neighboring borders.<sup>40</sup> If we interpret these conflicts and violations of human rights as threats to the stability of the “maintenance of international peace and security,”<sup>41</sup> the Security Council, acting on behalf of the UN, may legally take international action to restore the peace.<sup>42</sup>

Of course, the preferred methods of restoring peace and security are diplomatic, without the use of force. Chapter VI of the UN Charter outlines several pacific ways of restoring international stability through “negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement,”<sup>43</sup> and so on. If, however, the parties fail to find a diplomatic solution, they must refer the problem to the Security Council for possible action under Chapter VII.<sup>44</sup>

Chapter VII of the Charter concerns action with respect to threats to peace, breaches of the peace, and acts of aggression. Under Chapter VII, the UN might consider threats to peace and breaches of the peace grounds for intervention. UN Article 42 outlines the move from a more peaceful solution to the introduction of forces or the use or demonstration of coercive force.

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.<sup>45</sup>

However, some might argue that the fighting in Bosnia, the chaos in Somalia, and the killings in Rwanda are only local conflicts and actually pose no significant threat to international stability and peace. One often hears the common complaint, "Why should we get involved when it does not involve us, our national interests, international or regional stability, and so on?" One argument for international intervention is that threats to international stability now come from other non-military areas. Consider the economic impact of Iraq's invasion of Kuwait. Shifting the balance of natural resources distribution may not only have a monetary impact, but also may cause states that are dependent on these resources to feel threatened. In 1992, the Security Council released a Presidential Statement arguing that "non-military sources of instability in the economic, humanitarian and ecological fields have become threats to peace and security."<sup>46</sup>

Furthermore, apart from reacting only to threats against international peace, the UN can take diplomatic and forceful action to uphold human rights. The international community could take massive human rights violations as *ispo facto* threats to peace.<sup>47</sup> UN Article 55 reads that, "the United Nations shall promote ... (c) universal respect for and observance of, human rights and fundamental freedoms for all."<sup>48</sup> This Article echoes the purposes of the UN established in Chapter 1 of the Charter. Additionally, the UN may legally and forcibly act in support of human rights through Article 56. Article

56 authorizes the use of force to end severe violations of human rights. "All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."<sup>49</sup>

Invoking a response to a perceived threat to peace, the Security Council passed several resolutions. Obeying these resolutions, several states have provided forces to the threatened regions. There have been seven UN sanctioned humanitarian interventions between 1990 and 1996. These recent interventions include (1) Economic Community of African States (ECOWAS) in Liberia in August 1990 (SCR 866); (2) Operation Provide Comfort and Operation Southern Watch in Iraq beginning in April 1991 (SCR 678, 688); (3) UNPROFOR in Bosnia in August 1992 (SCR 770); (4) Operation Restore Hope in Somalia in December 1992 (SCR 794); (5) Operation Turquoise in Rwanda in June 1994 (SCR 929); (6) Operation Uphold Democracy in Haiti in September 1994 (SCR 867); and the abandoned intervention into Eastern Zaire planned for November 1996.<sup>50</sup>

#### International Law Regarding the Protection of Human Rights

Further international legal authority for intervention, in particular humanitarian intervention, comes from a general desire to protect and foster human rights. A recognized founder of modern international law, Hugo Grotius thought, "certain rights belong to every person by virtue simply of membership of the human race."<sup>51</sup> Grotius thought that each individual had what we now call "fundamental human rights." We have these rights merely by being persons. Furthermore, Grotius believed that "there is a universal obligation to ensure that these rights are respected."<sup>52</sup> The problem with his view of universal human rights is that there seems to be a difficulty in identifying which

human rights are actually fundamental and which are merely products of our cultural and social environments.

Following World War II, in 1948, the Universal Declaration of Human Rights was published to help define the “certain rights” Grotius identified. Although some rights remain in dispute (some countries have refused to ratify the document), the UN Charter combined with the Universal Declaration of Human Rights provides clear legal impetus for interventions that prevent certain human rights violations. “[There] can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliation or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.”<sup>53</sup>

Many of the international laws concerning human rights were created following the Nuremberg trials. International attention to the criminal proceedings surrounding the actions of the Nazi government lead to public outrage over the inhuman treatment of Germany’s own citizens. This outrage encouraged the formulations of the UN and lead to documents such as the “Universal Declaration of Human Rights.” This phenomenon became known as “Nuremberg Law.”

The trials at Nuremberg centered around four criminal counts. Prosecutors accused the Nazi government of Count One – conspiracy to commit aggression for planning the invasions of Poland, Russia, and France, and also Count Two – crimes of aggression which were labeled “crimes against peace” for the actual invasions. Count Three, committing war crimes, involved the ill treatment of prisoners of war, wonton damage of property, killing of hostages, and plunder. In addition, Count Three included the enslavement of civilians for forced labor. These war crimes were violations of the



Geneva conventions and other international treaties.<sup>54</sup> However, the fourth count of “crimes against humanity” was a new and (at that point in time) undefined crime.

Crimes against humanity involved “murder, extermination, enslavement, and other inhuman acts”<sup>55</sup> as well as the “persecution on political, racial, and religious grounds.”<sup>56</sup> From these proceedings, Raphael Lemkin coined the term “genocide.”<sup>57</sup> By finding the defendants guilty of Count Four, the Nuremberg judges set the precedent for laws protecting human rights. Crimes such as genocide are now internationally recognized as criminal acts and are punishable under international law. The fallout from the Nuremberg Trial led to the International Law Commission in 1950 later reporting that:

The crimes hereinafter set out are punishable as crimes under international law: ... (c) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial, or religious grounds....<sup>58</sup>

These international laws regarding crimes against humanity, in particular genocide, were promulgated through the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

With a foundation based on the protection of human rights and the maintenance of international peace and security, the UN Charter provides the basis for legal intervention. Furthermore, recent treaties involving respect for human rights issues and the international recognition of genocide as a crime, further reinforces a legal precedent for intervention. “Governments and armies engaged in massacres are readily identified as criminal governments and armies (they are guilty, under the Nuremberg code of “crimes

against humanity.)”<sup>59</sup> The possibility of legal interventions does not remove a state’s right of sovereignty guaranteed by non-intervention laws and legal tradition. However, when states are involved in the criminal acts of genocide and their actions threaten international peace and stability, legal grounds exist for international intervention with UN cooperation.

### Conclusion

With so many different examples of intervention, it has been difficult to provide a definition for what constitutes a military humanitarian intervention. Opaque conditions for defining “intervention,” accompanied by a long legal tradition of non-intervention have limited the recognition of justified interventions. To proceed with a study of justified intervention, I initially sought various definitions of “intervention” to pull the essential conditions from each of these definitions. Looking through past and current literature concerning intervention, I attempted to select those conditions that codified interventions in the past. Reducing the set of intervention conditions, I formulated a definition of “intervention” that applied the principles of agency, target, method, and purpose. Intervention is an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency’s nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights.

Furthermore, I refined the definition to reflect the criteria commonly considered necessary for a humanitarian intervention. Humanitarian intervention, I propose, is an intervention authorized by relevant organs of the internationally recognized authority where states are voting members for the sole purpose of preventing or putting a halt to a

serious violation of fundamental human rights; such that this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means.

Furthermore, I discussed the use of military forces and sometimes military force during humanitarian interventions when the intervention situation demands. Military experience in logistics distribution becomes very useful during interventions. Additionally, peaceful intervention operations including the distribution of needed food and medication are often blocked by ongoing conflict or by the malicious intents of states. Only an adequately equipped and trained military force is sufficient to end the conflict to allow other peaceful operations to continue.

I next proceeded to locate and describe the legal precedent for intervention. Embedded in the Charter of the UN lies the foundations for the recognition and protection of human rights. I have also described how interventions can legally counter the threat to international peace and security. In fact, the international law is so clear and well supported that members of the UN would be shirking their responsibilities if they refused to participate in stemming the spread of international violence and preventing genocide.

I will discuss the apparent dilemma between intervention and a state's right to sovereignty in detail in Chapter 5. Legal grounds for intervention does not necessitate intervention, nor will it pose a threat to sovereignty and the tradition of non-intervention. However, "governments and armies engaged in massacres are readily identified as criminal governments and armies"<sup>60</sup> and might temporality lose the right to sovereignty.

By committing genocide or threatening the peace, these criminal states would be legally open to intervention.

## Notes

<sup>1</sup> Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977), 105-7.

<sup>2</sup> Stanley Hoffman, The Ethics and Politics of Humanitarian Intervention (Notre Dame: Univ. of Notre Dame Press, 1996), 102.

<sup>3</sup> The United States used humanitarian grounds to help justify the invasion of Panama and Grenada. Similarly, the U.S. also gave a humanitarian justification for the involvement in Vietnam.

<sup>4</sup> J. E. Hare and Carey B. Joynt, Ethics and International Affairs (New York: St. Martin's Press, 1982), 22-49 (esp. 29, 34, 43). Also, see page 169.

<sup>5</sup> The American Heritage Dictionary, Second College edition.

<sup>6</sup> John Vincent, Nonintervention and International Order (Princeton: Princeton University Press, 1974), 4-13. Vincent lists six features of intervention: agency, target, purpose, force level, context, and legitimacy.

<sup>7</sup> Raymond Plant, "The Justifications for Intervention: Needs before Context," in Political Theory, International Relations, and the Ethics of Intervention eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 105.

<sup>8</sup> Webster's Third New International Dictionary, 1966.

<sup>9</sup> Hare and Joynt, 160.

<sup>10</sup> Richard Little, "Recent Literature on Intervention," in Political Theory, International Relations, and the Ethics of Intervention eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 22.

<sup>11</sup> Hare and Joynt, 159.

<sup>12</sup> John S. Mill, "A Few words on Non-Intervention," 1875, discussed in Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 48.

<sup>13</sup> Little, 23.

<sup>14</sup> Ramsbotham and Woodhouse, 114.

<sup>15</sup> William V. O'Brien, The Conduct of Just and Limited War (New York: Preager Publishers, 1981), 35. See also Hare and Joynt, 55-66; and Robert L. Holmes, On War and Morality (Princeton: Princeton University Press, 1989), 176-175.

<sup>16</sup> For a good summery of MSF, their history, and effects, see Ramsbotham and Woodhouse, 119.

<sup>17</sup> Ramsbotham and Woodhouse, 114.

<sup>18</sup> Mill, "A Few words on Non-Intervention," 1875, discussed in Ramsbotham and Woodhouse, 48. Unfortunately, Mill's forward-thinking views towards human rights did not apply to all people. He also held that "civilized nations could intervene in the affairs of 'barbarians' because normal reciprocity did not apply."

<sup>19</sup> Donald A. Wells ed., An Encyclopedia of War and Ethics (Westport, CT: Greenwood Press, 1996), 214.

<sup>20</sup> Kok-Chor Tan, "Military Intervention as a Moral Duty," Public Affairs Quarterly, vol. 9 no. 1 (Jan 1995): 31.

<sup>21</sup> W. Verwey, "Legality of Humanitarian Intervention after the Cold War," (1992), 114.

<sup>22</sup> Oliver Ramsbotham, "Humanitarian Intervention: the Contemporary Debate," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 63.

<sup>23</sup> Ramsbotham and Woodhouse, 115-116.

<sup>24</sup> Roderick von Lipsey, "The Intervention Cycle" in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 10-11. Cf. David Fischer, "Some Corner of a Foreign Field," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 29.

<sup>25</sup> Lipsey, "The Intervention Cycle," 10-11. Cf. Fischer, 29.

<sup>26</sup> Kori N. Schake, "The Breakup of Yugoslavia" in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 110.

<sup>27</sup> Michael Walzer, "The Politics of Rescue," Dissent (Winter, 1995): 37-8.

<sup>28</sup> Roderick von Lipsey, "Intervening Mechanisms," in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 56.

<sup>29</sup> Schake, 110.

<sup>30</sup> U. S. Department of the Army, Peace Operations, Field Manual 100-23 (1994).

<sup>31</sup> Lipsey, "Intervening Mechanisms," 59.

<sup>32</sup> Aurther M. Schlesinger, Jr., "America and the World: Isolation Resurgent?" Ethics and International Affairs 10 (1996): 161.

<sup>33</sup> Walzer, "The Politics," 38.

<sup>34</sup> Quoted in Anthony Harvey, "Can Intervention be Just?" in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 51.

<sup>35</sup> Ernst B. Haas, "Beware the Slippery Slope: Notes toward the Definition of Justifiable Intervention," in Emerging Norm of Justified Intervention, eds. Laura W. Reed and Carl Kaysen (Cambridge: Committee on International Securities Studies, 1993), 63.

<sup>36</sup> Haas, 68.

<sup>37</sup> Ramsbotham and Woodhouse, 62. Article 2(4) states, "All members shall refrain their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

<sup>38</sup> UN Charter, Article 1(3).

<sup>39</sup> UN Charter, Article 24 and 26.

<sup>40</sup> Cf. Lawyers Committee for Human Rights, Prosecuting Genocide in Rwanda: The ICTR and National Trials (New York: Lawyers Committee, 1997).

<sup>41</sup> UN Charter, Article 24 and 26.

<sup>42</sup> Michael W Alvis, "Understanding the Role of Casualties in U.S. Peace Operations" Landpower Essay Series no. 99-1 (January 1999): 6.

<sup>43</sup> UN Charter, Article 33.

<sup>44</sup> UN Charter, Article 37.

<sup>45</sup> UN Charter, Article 42.

<sup>46</sup> Security Council Presidential Statement (doc S/24111), 1992.

<sup>47</sup> Hoffman, 98.

<sup>48</sup> UN Charter, Article 55.

<sup>49</sup> UN Charter, Article 56.

<sup>50</sup> Ramsbotham, 64. Other interventions not included in this list include Operations Joint Endeavor and Joint Guard in Bosnia, NATO interventions Operation Able Sentry in Macedonia, Operation Deliberate Falcon in Kosovo, and the Military Forces Observer (MFO) mission in the Sinai specified by the Camp David Agreement. Interestingly, the UN has yet to invoke Chapter VII (although it had grounds to do so) for any of these interventions.

<sup>51</sup> Harvey, 51.

<sup>52</sup> Harvey, 51.

<sup>53</sup> Excerpt from the "Universal Declaration of Human Rights", quoted in Robert L. Phillips, "Ethics of Humanitarian Intervention" in Humanitarian Intervention: Just War vs. Pacifism, Robert L. Phillips and Duane L. Cady (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1996), 23.

<sup>54</sup> The Indictment of the trial. Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946 (Nuremberg, Germany, 1947), 27-68.

<sup>55</sup> Trial of the Major War Criminals, 66.

<sup>56</sup> Trial of the Major War Criminals, 66.

<sup>57</sup> Ramsbotham and Woodhouse, 28.

<sup>58</sup> "Principles of International Law Recognized in the Charter of the Nuremberg Tribunals and the Judgement of the Tribunal," International Law Commission, United Nations, 1950. Available from <http://www.un.org/law/ilc/texts/nuremberg.htm>.

<sup>59</sup> Walzer, Just and Unjust Wars, 106.

<sup>60</sup> Walzer, Just and Unjust Wars, 106.



## CHAPTER 3

### A DEONTOLOGICAL APPROACH TO INTERVENTION

#### Introduction

There has been a resurgence of news interest surrounding the former Khmer Rouge regime in Cambodia. On March 6, 1999, the last leader of the Pol Pot regime, Ta Mok, was captured and will now face criminal charges. He will be prosecuted for crimes against humanity and for his part in the genocidal "killing fields" rule of the Khmer Rouge during the 1970's. During the Khmer regime, between 1975 to 1979, an estimated 1.7 million people died of war, hunger, and disease. The genocide continued unabated until the Vietnam's 1978-79 intervention ended the Khmer Rouge rule.<sup>1</sup> "Vietnam's public justification was the need to remove a genocidal regime. Clearly, in light of what we now know went on inside Kampuchea [(Cambodia)] ... the justification carries a high degree of validity."<sup>2</sup> The outcome of the intervention was positive. The genocide ended and a new government ruled Cambodia.

The problem with the intervention, which all but negates the positive humanitarian outcome of ending genocide, is that Vietnam informally controlled the new Cambodian government and remained in Cambodia under the Treaty of Friendship until 1989. While initially a very humanitarian action, Vietnam's intervention does not seem to satisfy the conditions for a humanitarian intervention I formulated in Chapter 2. Recall that I formulated humanitarian intervention as

Humanitarian Intervention =<sub>df</sub> an intervention authorized by relevant organs of the internationally recognized authority where states are voting

members for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights; such that this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means.

A major portion of this formulation of humanitarian intervention is its humanitarian principle. At the heart of what makes an intervention humanitarian is the “purpose [of] preventing or putting a halt to a serious violation of fundamental human rights.” Yet, Vietnam’s actions betrayed their real non-humanitarian intention to place a “friendly” government in Cambodia. In retrospect, the intervention into Cambodia was questionable at best. Nevertheless, the intervention stopped the genocide and Vietnam’s official position appealed to the international view of a state’s duty to protect human rights when Vietnam ousted the Khmer Rouge regime. But, did Vietnam have a duty to intervene?

In the last chapter, I discussed the legal precedent for protecting human rights. However, where do these rights come from? Grotius thought, “certain rights (now called human rights) belong to every person by virtue simply of membership of the human race.”<sup>3</sup> Furthermore, Grotius believed that, “there is a universal obligation to ensure that these rights are respected.”<sup>4</sup> However, we must also ask, “Even if we acknowledge the existence of human rights, how do we move from the principles of human rights to the corresponding duties involved in protecting human rights?”

In order to locate this transition from rights to duties, we must look at the pertinent moral philosophic writings concerning rights and duties. In past philosophic writings, there is limited discussion of intervention, and most of the theories tend toward the principle of non-intervention. In his “A Few Words on Non-Intervention,” Mill

opposed intervention in general and further proposed that interventions be limited to severe cases.<sup>5</sup> Kant also desired to limit interventions. The fifth preliminary article of Thoughts on a Perpetual Peace reads, "No state shall forcibly interfere in the constitution and government of another state."<sup>6</sup> Both philosophers seem well disposed to the principle of non-intervention. Yet, humanitarian interventions, as I have defined them, were unknown to Mill and Kant. Their theories were a product of their time and did not include intervention as a means of ending violations of human rights. While territorial wars and other aggressive invasions were rampant during this period, philosophers of the times had no concept of the contemporary notion of genocide. Perhaps if they were alive today, Kant and Mill would adapt their theories to accept my definition of "intervention" that includes a humanitarian purpose.

Kant, Mill, and other earlier philosophers were not totally ignorant of the concept of human rights. In fact, we derive our modern notion of "fundamental human rights" from works developed from earlier theories. In addition to Grotius, another international jurist, Alberico Gentili, believed in the concept of human rights formed from a "kinship of nature." His work, De Jure Belli Libri Tres (written in 1598), reads, "Of an honorable reason for waging war ... the subjects of others do not seem to me to be outside that kinship of nature and society formed by the whole world. And, if you abolish that society, you will destroy the unity of the human race."<sup>7</sup>

These key humanitarian principles were molded into theories during the Enlightenment. During the Enlightenment, several political theorists and philosophers (e.g. Hume, Rousseau, and Locke) published influential works, which outlined the ideals of liberty, justice, "inalienable rights," and equality. In 1791, the French government

adopted the “Declaration of the Rights of Man and of Citizens,” encapsulating the ideas of natural human rights. Included in the “sacred rights of men and citizens” is the declaration that, “men are born and always continue, free, and equal in respect of their rights.” Furthermore, the declaration defined the end of political associations as, “the preservation of the natural and imprescriptible rights of man.”<sup>8</sup> Thomas Jefferson, inspired by the liberal principles of Locke and Rousseau, wrote “The Declaration of Independence” for the revolutionary American Colonies. “The Declaration of Independence” incorporated liberal principles into the foundation for building a nation. It reads, “We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with unalienable rights; that among these are life, liberty, and the pursuit of happiness.”<sup>9</sup>

Modern philosophers built on this tradition. In spite of his support of non-intervention, Kant also believed that we enjoy certain rights – rights that not only are inalienable but universal as well. In Thoughts on a Perpetual Peace, Kant defends the theory of universal human rights grounded in “the purity of its origin, a purity whose source is the pure concept of the right.”<sup>10</sup> Furthermore, these rights are “perceived by human beings *a priori*, independently from their experiences and traditions.”<sup>11</sup> These same ideals were promulgated in the World Conference on Human Rights of 1993. (One hundred seventy-one nations adopted it on June 25, 1993, in Vienna). Paragraph 5 reads, “All human rights are universal, indivisible and inter-dependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>12</sup> I propose that if there are indeed human rights, we have corresponding duties *vis-à-vis* these rights.<sup>13</sup>

Contrary to Teson, who “is endeavoring to reorient the established conception of international law, returning more to the position adopted by Grotius, whereby intervention is always permitted, provided that the cause is just,”<sup>14</sup> I think that only certain interventions should be permitted. I will focus on how some cases of massive human rights violations lead to deontological arguments to intervene.<sup>15</sup> I will begin by outlining two theories by which these corresponding duties arise from human rights. The first theory proposes that we have certain *prima facie* duties with respect to human rights. The second theory proposes that we have duties from a Kantian/Rawlsian social contractual view towards human rights. Regardless of how these duties arise from human rights, I will use the analogy of the Good Samaritan to show how violations of these rights might impose some obligations for us to intervene.

Further, I will discuss several notions of how the duties and rights of the agency and the target are related. For example, some duties of the victims (target state) pass on to others (states, the international community, or the UN) opening the way for intervention. Additionally, I will discuss H.L.A. Hart’s notion of the differences between general and specific duties, and present a form of “Guardian Relationship” that might address how the agency acquires the duty to intervene.

Political realists such as Niebuhr, Morgenthau, and Kennan propose that international intervention could never be a duty.<sup>16</sup> They believe that (1) there is no international society, and that (2) there is no such thing as an international morality. Thus, for a realist, the decision to intervene or not, while politically important, is morally irrelevant. I disagree. I will show that political, legal, and economic interdependence lends credence to a form of “international community.” Furthermore, I will discuss how

intervention can lead to increased stability and international credibility – both of which are politically desirable for the state. Finally, I will discuss how a realist argument for non-intervention is non-tenable.

### *Prima Facie Duties*

W. D. Ross introduced the formal concept of *prima facie* duties in his work, The Right and the Good. He believed that obligations were not derived from a utilitarian concept that proposed “what produces the maximum pleasure is right.”<sup>17</sup> Instead, Ross thought that an act is obligatory in its own nature – not from its consequences. Furthermore, he thought that certain acts were right or wrong based on their characteristics, “in virtue of [them] being of a certain kind (e.g. the keeping of a promise).” These he named *prima facie* duties. He divided these duties into six categories: duties of fidelity, duties of repatriation, duties of gratitude, duties of justice, duties of beneficence, and duties of self-improvement.<sup>18</sup> Would Ross consider intervention a *prima facie* duty? If an intervention was a *prime facie* duty, would the intervention fit into any of these duty categories?

Recall that Ross’ formulation of a *prima facie* duty was based on the act’s characteristics by “virtue of being of a certain kind.” If we consider that the particular act of intervention is of a certain kind, such as protecting human rights, preventing genocide, feeding the hungry, etc., Ross might well consider that act of intervention a *prima facie* duty. Assuming there are universal human rights, severe violations of these rights may generate *prima facie* duties. The U.S. Catholic Bishops wrote:

Human life, human rights and the welfare of the human community are at the center of Catholic moral reflection on the social and political order.

Geography and political divisions do not alter the fact that we are all one human family, and indifference to the suffering of numbers of that family is not a moral option.... [Furthermore,] military intervention may sometimes be justified to ensure that starving children can be fed or that whole populations will not be slaughtered.<sup>19</sup>

“[Ensuring] that starving children can be fed or that whole populations will not be slaughtered,” seems similar to the “characteristics of a certain kind” Ross had in mind for defining *prima facie* duties. Yet, feeding the children and stopping slaughter seem too specific to fit into one or more of Ross’ duty categories. We need a humanitarian principle that encompasses such humanitarian purposes. In his paper, “Humanitarianism and the Laws of War,” Anthony Hartle offers two humanity principles upon which the laws of war are based. They are HP1: Individual persons deserve respect as such, and HP2: Human suffering ought to be minimized.<sup>20</sup> While HP2 focuses on the consequences surrounding suffering, HP1 has some potential for forming *prima facie* duties. If one could apply HP1 as a principle that relates respect for others to human rights, acts that protect these rights might be *prima facie* duties. Hartle writes:

Respect for persons entails the ideas of equality of consideration and human dignity. Individual persons cannot be treated with respect for what they are unless they are considered equally as persons ... [where a person is] a rational being capable of independent choice and thus deserving of respect from other rational beings solely on the basis of that status. Human dignity is inherent in such a concept.<sup>21</sup>

Suppose we have a situation similar to the massacres under the Pol Pot regime. Hundreds of thousands of people are being starved, persecuted, and killed. To intervene would be a *prima facie* duty under the principle that “individual persons deserve respect

as such.” Human dignity is inherent in the concept of respect for persons. The starvation, persecution, and murder in the target state constitute violations of human dignity and thereby violates the principle of respect for all individuals.

Let us for a moment assume that we have a *prima facie* duty to intervene in a particular circumstance. If we consider an intervention as a *prima facie* duty, the duty of that intervention seems to correlate with Ross’ duty categories of justice and beneficence. Justice, Ross thought, involves the distribution of happiness. Corresponding duties of justice are derived from ensuring an equal distribution of happiness. Perhaps the equal distribution of happiness includes each individual’s human rights. Recall that Thomas Jefferson wrote that inalienable rights include “life liberty, and the pursuit of happiness,” and that Hartle thought, “individual persons cannot be treated with respect for what they are unless they are considered equally as persons.”<sup>22</sup> Specifying that happiness entails the inalienable human rights enjoyed equally by all persons, intervention becomes a duty of justice.

We could also conceive that, in addition to being a duty of justice, there is also a *prima facie* duty of intervention that falls under “duties of beneficence.” Ross thinks that some duties rest “on the mere fact that there are other beings in the world whose condition we can make better.”<sup>23</sup> These he categorizes as duties of beneficence. Indeed, this category seems to embody the purposes behind humanitarian intervention. “Human life, human rights and the welfare of the human community are at the center ...political divisions do not alter the fact that we are all one human family.”<sup>24</sup> Furthermore, protection of these rights ensures an equal respect for individuals. Intervention becomes



a *prima facie* duty when violations of these rights become severe. Indifference to the suffering of large numbers is not a moral option.

### A Kantian/Rawlsian Approach

Another way that duties can be derived from human rights is through the theories proposed by Kant, and later by Rawls. Contemporary theorists such as Teson, Wicclair, and M. Smith are attempting to adapt Kant and Rawls' theories to portray a duty to intervene from either universalizable maxims or appeals to principles derived from operating under a "veil of ignorance."<sup>25</sup> Although these theories have their differences, their basic premises are similar enough for us to generalize. The basic structures and the conclusion that sometimes there is a duty to intervene are the same. Thus, instead of describing their nuances, I will generalize to provide an interpretation of their theories.

Teson, Wicclair, and M. Smith's theories each entail two stages of moral reasoning. First, one follows Kant's categorical imperative procedure. This involves choosing a maxim that can be followed by all rational individuals. Then, one wills this maxim to be universalized in a presumed "new social order." If we imagine that the new social order actualized after the maxim has been adapted, the agent then asks himself whether he could follow that maxim.<sup>26</sup> This first stage of adopting a universalized maxim, and determining if one could live under it, is similar to Rawls theory of the "veil of ignorance." Under the veil of ignorance, everyone must acknowledge the possibility that he or she will turn out to be the least advantaged. Each person, should they find themselves in this position, will then agree to the principles that would favor them – "Everyone maximins."<sup>27</sup>

Further, these Rawlsian-type “veiled egoists” will agree on two basic principles of justice, because they do not know whether they are among the disadvantaged or not. These justice principles are (1) equal liberty for all, and (2) benefits to the disadvantaged with these benefits open to everyone. Equal liberty “would establish those rights that are guaranteed in the International Covenant on Civil and Political Rights.”<sup>28</sup> The principle of distributing benefits to the disadvantaged (“difference principle”) would ensure “that social and economic inequalities be to the greatest benefit of the least advantaged,”<sup>29</sup> and require that the positions of advantage are equally accessible to all.<sup>30</sup>

The second stage takes the maxims (principles) developed under the veil of ignorance and advances them to the international level. This stage, according to Paragraph 58 of A Theory of Justice, requires the members of the societies to nominate “ambassadors” who will gather and determine which maxims are internationally pertinent. These ambassadors from the Rawlsian societies then decide among themselves which principles become international law (*jus gentium*).<sup>31</sup>

But, what would make the ambassadors’ choose a principle of humanitarian intervention over a general principle of non-intervention? An objector to intervention could pose an argument surrounding the premise that the ambassadors would promulgate a principle of non-intervention based on the maxim supporting the sovereign rights of states, or in this case “the Rawlsian societies.” Because they were under the veil of ignorance, they would not know if they were members of an agency or of a target. Since they might value a principle including the right of self-determination over a principle based on protection of rights, these ambassadors might conclude that intervention is wrong.

I disagree. Wicclair's "Rawls and the Principle of Nonintervention," addresses this possible objection. He thinks, "these representatives will not choose the absolute principle of nonintervention, but rather a principle that condones humanitarian intervention on behalf of human rights."<sup>32</sup> The question of which principle the ambassadors will adopt is not based directly on the issue of sovereignty and self-determination. Rather, the question surrounds the legitimacy of the state they represent. These hypothetical ambassadors will not know what type of state they live in. If they knew that they lived in a just state, they would be confident in applying a principle of non-intervention. However, they cannot be sure that the state in which they live is not unjust. "They will choose such a principle [of intervention] because the veil of ignorance will keep them from knowing whether or not their own state is unjust, in which case the only source of salvation may be with foreign intervention."<sup>33</sup>

A Tessonian individual who is already convinced of the rightness of Rawlsian principles will, under the veil of ignorance, be afraid that he or she will turn out to belong to an unjust state. And such a person, following a maximin strategy that seeks to make what is intolerable as tolerable as possible ... will have no difficulty recommending that humanitarian intervention be allowed.<sup>34</sup>

Under the veil of ignorance, we cannot know for sure if we will be the victims living in an oppressive state. These ambassadors, assuming that they could be from an unjust state, apply the principles of equal liberty and distribute benefits to all, ensuring that they are sufficiently "cared for" should they indeed find themselves members of the disadvantaged.

Thomas Pogge argues that intervention is obligatory for a different reason. He believes that we have a duty to intervene because of our participation in an “unjust global scheme.” His summarized argument suggests that our international society has created the situations that prescribe intervention. We have caused this humanitarian need because of our active participation in corrupt regimes, by denying the distribution of technology and resources to the Third World, and by stymieing the economic growth of other nations. Yet, Pogge also writes, “we are asked to be concerned about human rights violations not simply insofar as they exist at all, but only insofar as they are produced by social institutions in which we are significant participants.”<sup>35</sup> Pogge proposes some compelling reasons why our past negative actions demand some recompense.

However, Pogge’s argument seems to limit the cases of human rights violations where intervention would be obligatory. “[This argument] restricts our duties to cases of human rights violations that have (or can be shown to have) resulted from our past to present involvements. If there are indeed human rights, we ought to have corresponding duties vis-a-vis these rights,”<sup>36</sup> whether we are the cause or not.

#### An Analogy

Regardless of whether the duty to intervene is a *prima facie* duty, penance for past sins, or based on principles founded under the veil of ignorance and adapted as international maxims, violations of human rights seem to demand some type of action. The question is what is the proper level of response given some degree of violation. There seems to be no scale to measure the severity of these violations. Is any violation of a human right substantial enough for intervention? Does an insignificant violation generate a duty to intervene? An objector might say, “[certainly,] we cannot presume

that the violation of a right in itself results in an obligation for bystanders to intervene on behalf of a wronged individual.”<sup>37</sup>

Consider a scenario where you witness a mugging in an alley while walking downtown. An old man is lying on the ground clutching his head yelling, “Help! I need help!” What do you do? Obviously, the mugger violated one or more of the old man’s rights. Should you intervene? You were just walking along minding your own business. Your rights are not being violated. Suppose your only two alternatives are to either assist the injured man or continue walking past. If you stop to render assistance you will be late to your destination, but you will also be helping the injured man. Yet, if you continue walking you might feel guilty. Would you have a duty to intervene? By ignoring the cries for help, you will be violating a right of the injured man – the right of assistance. “[You] will be criticized for violating the universal right of all individuals to receive assistance when they are in serious difficulty....”<sup>38</sup>

The universal right to receive assistance is the foundation for the so-called “Good Samaritan Laws.” It has become illegal to pass an accident scene and not render some appropriate form of assistance. This right to receive assistance generates an obligation to all of us as witnesses or bystanders to a disaster, an accident, or to a crime.<sup>39</sup>

The story of the Good Samaritan is an example of the right of all individuals to receive assistance from others in time of need. The Good Samaritan’s obligation is the duty correlative to this right ... our obligation to assist those who are suffering violations of their rights is a sub-class of our general right to assistance in a time of need....<sup>40</sup>

Under any other circumstances, the old man in the mugging example is obligated to look after himself. He has a duty to protect his rights. Thus, the intervening agent has no obligations to intervene in the man's life while the man can care for himself. At any other time, the agent's intervention might be considered interference in another's affairs. However, because the old man was incapable of acting for himself, intervention on his behalf became the duty of the agent walking by.

The Samaritan only has a duty in this situation because the stranger obviously is not in a position to look after himself. [Normally,] it would be the duty and the prerogative of the stranger to look after himself, and it would be the normal duty of the Samaritan to refrain from interfering in his affairs. It is only because this normal circumstance has been overturned that it is no longer presumptuous but is instead the duty of the Samaritan to intercede in the vital affairs of the stranger.<sup>41</sup>

Similarly, in the international community, states are normally obligated to refrain from interfering in one another's affairs. However, should a state or a group of individuals lose their ability to protect themselves under the right of self-help, the international community has a duty to protect their universal right to receive assistance. As the Samaritan was obligated to help the mugging victim, the international community must render aid to the victims of the other state. Intervention becomes obligatory.

I have shown how the Samaritan has an obligation to assist the victim because of the victim's universal right to assistance. This was a life-threatening situation, which would seem to be a severe violation of the victim's human rights. However, there still is no accurate scale to measure the severity of these violations obligating assistance. It seems that any violation of a human right is substantial enough to require action.

Additionally, it appears that even an insignificant violation can (and it would seem actually does) generate a duty to intervene. This is one of the unresolved objections to deontological arguments for intervention. Unless the agent could view a duty to intervene as *prima facie* less important than a duty to perform some other act, the agent is obligated to intervene. Placing one's duty to intervene above all other duties might lead to the kind of universal guilt Father Zossima's younger brother experienced in The Brothers Karamazov. He was convinced that, "everyone of us is responsible for everyone else in every way, and I most of all."<sup>42</sup> It might be possible for all violations of human rights to obligate us to intervene. However, "ought" implies "can," and some acts of intervention to stop human rights violations may not be valid alternatives. In Chapter 4, I discuss this objection further and present a consequentialist argument for intervention.

### Duty Relationships

In the Good Samaritan example, the bystander assumes the duty to intervene according to the right of all individuals to receive assistance. However, how does this duty pass between the mugging victim (who gives up the duty) and the passerby (who gains the obligation)? In this section, I will discuss how duties pass from one agent to another.

H.L.A. Hart has a different view of duties and duty bearers. In his paper, "Are there any Natural Rights?," he categorizes duties according to the relationship between the agent and those affected by her actions (the target). Hart draws this distinction between what he calls general duties and special duties. Hart's special duties arise from the relationship between family, friends, past relationships, and even within contractual

agreements. Special duties arise out of the closeness of the relationship between the agent and the affected individuals. Special duties are also distinct because they have an identifiable duty-bearer. Hence a father has certain special duties to his daughter and a lender has special duties to a lien holder. Alternatively, general duties are duties that are owed to everyone by everyone. For example, everyone has a general duty to come to the assistance of those in need. In addition, unlike a special duty, the duty-bearer is not specified for a general duty.<sup>43</sup>

The best way to demonstrate the distinction between general and special duties is through an example. Consider the duties of a lifeguard. Suppose that a man is swimming in a public area without a lifeguard on duty. He is alone in the water but the beach is crowded. Unfortunately, the man begins to cramp and starts struggling to stay afloat. Unable to continue swimming, the man yells for help. A group of accomplished swimmers on the beach hears his cries for help. No one on the beach knows the struggling man; therefore, the swimmers have no special duties towards him. If there were a lifeguard on duty, she would have a special duty to assist the swimmer because of the lifeguard-swimmer relationship. However, there is no lifeguard present. Because there is a general duty to come to the assistance of those in need, each swimmer has a duty to attempt to rescue the man.<sup>44</sup> Thus, as the Samaritan had a duty to help the mugging victim, the qualified swimmers cannot allow the struggling man to drown.

Likewise, an international police force would have the special obligation to ensure that violations of human rights were prevented, or at least stopped. They would be the assigned duty-bearer, acting on behalf of humanity to keep the international peace. They could be tasked to prevent genocide, pursue war criminals for trial, de-militarize warring



factions, and carry out other associated peace operations. However, such a force does not exist. Without such an international police force, who becomes the duty-bearer? Is it presumptuous to assume that these intervention obligations would simply be unfulfilled just because there is no international police force? The obligation does not disappear. Just as if one of the accomplished swimmers failed to rescue the drowning individual, a failed attempt or the absence of the primary duty-bearer (Lifeguard) does not eliminate the duty burden required of the other swimmers on the beach. Each swimmer is obligated to try to rescue the man until he is saved.<sup>45</sup> Likewise, the international community is not absolved of their general obligations, should the agency identified to intervene fail or (as in the case of the international police force) should the community fail to identify a duty-bearing agency.

This does not mean that only those assigned duty-bearers carry the moral burden. The rest of the international community is not absolved of its general obligation. Nations not required or unable to intervene are obliged to act within other capacities. For instance Japan, which because of historical reasons is not able to contribute troops to multilateral military efforts, can nonetheless fulfil its general obligation by contributing financially or logistically.<sup>46</sup>

What is unique about Hart's distinction between special duties and general duties is that everyone shares in the general duties. Consider the intervention in Somalia. When U.S. and UN forces withdrew from Somalia, the country soon slid back into chaos. Today, six years later, there is still no central government. Did the obligation to assist the Somalis end with the withdrawal of UN forces? No, according to Hart's view of duties, the obligation remains. The UN forces had a contractual special duty to intervene. But

once they left, their special duty reverted to a general duty of the international community. Further, this general duty still obligates the international community to do something to assist Somalia.

It is precisely because there are general duties that we assign people with specific roles to carry out these duties. That is, general duties generate special duties ... Special duties are not themselves the source of duties. [They] are simply devices for mediating general duties; it determines who should do what.<sup>47</sup>

Similarly, Hart's view of duties provides the basis for arguments concerning the division of labor during interventions. The U.S. government often complains of bearing too much of the material, personnel, and financial burden for the recent international interventions, and rightfully so. Even though they were obligated by the general duty to assist, the able bystanders in the Good Samaritan story walked past the victim without providing aid. Likewise, every able state is obligated to render assistance. What makes the complaints valid and legitimate is that everyone – all states – has a general duty to stop severe violations of human rights and other human suffering. Since there is no international police force with a special duty to intervene, each state in the international community should bear their share of the burden of intervention.

For any one state to take on more than their share of the burden would be supererogatory. General duties are duties from everyone to everyone. There are no specified duty-bearers. Therefore, the responsibility is split among those able to help. Doing more would be laudable, but it is not required. Think about the soldier who throws herself on a grenade to protect her fellow soldiers. She performs an act that cannot be considered obligatory. She has no special duty to sacrifice her life to protect others.

Neither does she have any more general duty to her comrades that they do towards each other; she should be commended for her heroism, however, no one is morally required to perform supererogatory acts.<sup>48</sup>

We have many special duties – duties to our family, duties to our friends, duties to school and work, and even civil duties. Yet, sometimes, certain general duties can outweigh our special duties at home.

In the case of wide-spread human atrocities in foreign lands, the vulnerabilities of foreigners can become graver and more serious than those of fellow contractees, and as such our general duties towards them can override our special duties towards compatriots.<sup>49</sup>

Recall the story of the Good Samaritan. He had special duties to family and friends, but he was also obligated by the general duty to render assistance to the mugging victim. The victim had a right to receive assistance from others. “The Good Samaritan’s obligation is the duty correlative to this right ... [and] our obligation to assist those who are suffering violations of their rights is a sub-class of our general right to assistance in a time of need.”<sup>50</sup>

Elfstrom proposed a specific case of how our special duties may obligate the international community to intervene. He calls the duty-bearing relationship the “Guardian Relationship.” This guardian relationship is similar to the one defined by the relationship between a mother and son, a minister to his parishioners, and a government to the people it represents. He writes:

Nation-states have the legitimate authority to speak and act for the citizens of those nation-states. There is an important factor which undergrids this

perspective. In the eyes of the larger world community, the government of a nation-state and its citizenry stand in a special relationship somewhat similar to the special relationship between parent and offspring.<sup>51</sup>

Yet, as we have seen in several areas around the world, this relationship seems to dissolve when tested. The special duties built upon these relationships between states and its people seem to vanish when greed or self-interest takes over. Just because the responsible duty-bearer fails to take on their obligation, people still retain the right to receive assistance. “[A] morally justified right does not just disappear or cease to direct behavior when it is systematically violated. In such a case, the right’s capacity to generate obligations may shift so as to increase the responsibilities of the secondary [duty-bearers].”<sup>52</sup> The disappearance of their government or the state’s ignoring of the plight of their citizens does not erase the rights of the citizens, nor does it completely absolve their duties.

Furthermore, a state’s diminishing special duty does not alter the general duties of everyone outside that state. The general duties of the international community to ensure that human rights are protected while distributing aid to the suffering and the less fortunate are not diminished. In fact, these general duties might generate special duties for the UN, certain states, and other agencies to intervene.

It does not follow, because there is currently no assigned or established institution to defend human rights, that no one state has a duty to do so should the need arise. In such a case, members of the international community have a duty to see to it that the community’s duty is carried out.<sup>53</sup>

Suppose that general duties actually exist that obligate the international community to intervene. Because there is no international police force, either individual states would be obligated to intervene or obligated to provide forces under an UN mandate for intervention. Some would argue that the obligation to use internal forces for purposes other than self-defense violates the state's neutrality. "[To] say that a state has a duty to intervene is to deny its sovereign right to remain neutral."<sup>54</sup>

Although this line of reasoning seems valid, the pseudo-isolationism caused by states strictly adhering to their right of neutrality is purely theoretical. States are too economically dependent upon each other to simply ignore another's pleas for assistance. In addition, strict neutrality would negate the effectiveness of international treaties. Finally, the actions of unjust states might weaken their claim to a right of sovereignty. "If we are willing to subject state sovereignty to human rights considerations, then it follows that the rights neutrality can be overridden when the call of human rights so demands, when human rights abuses are "terrible" enough."<sup>55</sup>

In this section, I have argued that the international community has certain duties generated from universal inalienable rights of all individuals. These duties are either derived as *prima facie* duties, or through a Kantian/Rawlsian process of international adaptation of universal maxims adopted under the "veil of ignorance." Nevertheless, both of these theories concern respect for individuals and the universal right of individuals to receive aid in the time of need. Additionally, I have demonstrated Hart's differentiation between special duties and general duties. Moreover, I have shown how the international community gains the duty to intervene. Pope John Paul II stipulated that, "humanitarian intervention be obligatory where the survival of populations and

entire ethnic groups is seriously compromised. This is a duty for nations and the international community itself.”<sup>56</sup>

### Realism

Niebuhr, Morgenthau, and Kennan and other political realists would disagree with the deontological argument for intervention. They would propose that international intervention could never be a duty.<sup>57</sup> In fact, they believe that states do not have any international duties except one – self-interest. Their beliefs are founded on two basic principles: (1) there is no international society, and (2) there is no such thing as an international morality. For a realist, the question of whether to intervene or not to intervene is morally irrelevant. They would suggest that what is important is the balance of power and the political effect. Thus, a notion that individual states have a general duty to intervene to stop serious human rights violations would seem incomprehensible to a realist.

Yet, what makes the realist view so apparently at odds with the deontological argument? One answer is that a realist derives her beliefs about the question of intervention from a realist point of view. This realist point of view is founded on “assumptions about human nature, the importance of the state, the struggle for power as the dominant feature of an anarchic international milieu, and the preeminence of the national interest defined in terms of power.”<sup>58</sup> States exist in a Hobbsian “State of Nature,” each competing with the other for power and gain.

To this war of every man, against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place, where there is not common power, there is

no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues.<sup>59</sup>

To the realist, the mere concept of some sort of international community is ridiculous and counterintuitive. I will formulate this principle as

Realist Rule =<sub>df</sub> A state will act according to its best interests.

States act as individuals, each pursuing their own interests. They interact with other states solely to further their own advantage.

Furthermore, there is no international entity legislating laws and providing justice over the individual states. Thus, as in Hobbes' State of Nature, there is no concept of international right and wrong. No international morality exists. With no existing international morality, the idea of duties obligating states to come to the aid of another is incoherent. Realists believe agencies undertake interventions solely for the self-interest of themselves.

Moreover, trying to show where intervention is morally justifiable is futile.

For a century and a half, statesmen, lawyers and political writers have tried in vain to formulate objective criteria by which to distinguish between legitimate and illegitimate intervention. They have only succeeded in clothing the interests and policies of their respective nations within the appearance of legitimacy.<sup>60</sup>

Although, historically states have intervened for their own purposes, it does not follow that all interventions are rooted in purely self-interest. Consider the example of India's intervention into East Pakistan discussed in Chapter 2. India had a humanitarian purpose and the intervention had a humanitarian end. Even if all interventions are rooted in self-

interest, does this necessitate abandoning justified interventions? A deontologist could argue that the international community's general duties serve to fulfil the states' self-interest. One might further argue that stopping genocidal slaughter is in everyone's self-interest. Of course, to offer her objection, the deontologist must show that there is some type of international community.

Part of the realist objection to accepting intervention as a duty is that there is no international society to give such a moral foundation a meaningful context.<sup>61</sup>

Realism denies the existence of an international society, where "society" is understood to apply to states coexisting in mutually recognized interdependence, according to common and binding rule and with a significant degree of shared moral and cultural understanding.<sup>62</sup>

Two facts seem to support the realist claim that there is no international community.

First, states (as individuals) do often act in apparent self-interest. Second, apart from the UN, there is no organization that encompasses all the separate states. Additionally, as I discussed in Chapter 2, the UN has limited jurisdiction over the affairs of the states.

However, history has shown that states do not operate in a vacuum. There is an overlap of interest on issues ranging from technology and communications to interdependent economies and political treaties. Military interests are also expanding from a purely internal state-function to multi-state organizations and treaties. This is best exemplified with the formation of international units such as the Franco-German Brigade and the NordBat units of Scandinavia, and the recent acceptance of the Czech Republic, Hungary, and Poland into NATO. Furthermore, as was prevalent during the Cold War, "cooperation grows with development of technologies of large-scale destruction."<sup>63</sup>



States often sign treaties and form agreements that actually limit their self-interest.

Interdependence furthers the individual state's good by furthering the common good.

The UN may not constitute an international government, yet the individuals in every state are members of the human race. Perhaps this membership is not enough to define an international society. However, combined with the interdependence of states, membership in the human race lends credence to the presence of an informal international society, if not a formal one. Foucault wrote, "there exists an international citizenry, which has its rights, which has its duties, and which promises to raise itself up against every abuse of power, no matter who the author or the victims."<sup>64</sup>

The other argument that forms the foundation of realist thought is that there is no international morality, and there can be no international morality. This principle leads Hans Morgenthau to argue that states both intervene and oppose intervention whenever it is in their interest. Moral and legal arguments serve no function other than "to discredit the intervention of the other side" and to "justify one's own."<sup>65</sup> Empirically, Morgenthau may have an accurate observation of how states use moral arguments to justify or discredit another's actions. However, it does not follow that intervention can never be morally justified. "Ought implies can." "If politics cannot be moral, it is not the case that they ought to be moral, nor, [more importantly,] that they ought not to be."<sup>66</sup>

Regardless of whether realists are correct to say that there is no international society and there is no such thing as international morality, a case for intervention can be made based purely on realist reasoning. First, there is a realist case for intervention to ensure or reinforce international stability. A state might argue for intervention in order to structure a more orderly international system.<sup>67</sup> Moreover, as states often restrain their

immediate self-interest because of economic interdependence, states might obligate themselves to ensure stability between other states. Long-term trade growth and a reduction in the risk to security that results from global stability are both within the self-interest of states. "All states have an interest in global stability and even in global humanity," Walzer writes, "and in the case of wealthy and powerful states like ours, this interest is seconded by obligation."<sup>68</sup>

Furthermore, justifying intervention might provide realists the additional benefit of establishing the international credibility of the agency. A realist might reason that, "no one will take us seriously as a great power if we allow this [(genocide, forced deportations, mass starvation)] to occur."<sup>69</sup> In addition, in order to facilitate fulfilling a state's self interest, demonstrated international leadership during a multi-lateral intervention becomes an important part of foreign policy. This is being currently demonstrated in the U.S.-led peace initiative for ending the Kosovo conflict. Thus, states could also make a realist case for intervention by improving its position as a great power.<sup>70</sup>

Finally, a realist should recognize that the notion of a common humanity does not have to be contrary to the vital interests of states. The UN Independent Commission on International Humanitarian Issues reported that, "Sovereignty need not conflict with humanitarian concerns if states can be brought to define their interests beyond the short term."<sup>71</sup> Just as states subordinate their short-term interests, sign treaties, and form international organizations, states can recognize the long-term benefits of universal human membership and the benefits of protecting corresponding human rights. "The interests of common humanity, which transcend national boundaries are not a menace to

the vital interests of states.”<sup>72</sup> Even Morgenthau thought that no foreign policy could allow mass extermination, even if this genocide might somehow be deemed beneficial to national interest. He thought that absolute moral principle existed, “the violation of which no consideration of national advantage can justify.”<sup>73</sup>

I have demonstrated that realists often condemn the principles of intervention and non-intervention as hopelessly naïve. They argue that no international community exists to judge interventions. However, a lack of formal international community alone does not prevent us from making moral judgements about intervention. In addition, although realists seem to promote a policy of non-intervention, the realist position lacks specific justification for a principle of non-intervention. “[In] their specific policy recommendations, they almost always oppose intervention on grounds of prudence.”<sup>74</sup> The long-term benefits to individual states, as well as the interdependent relations between states, combined with the undeniable universality of membership in the human race, render realist arguments against intervention in general untenable.

### Conclusion

In this chapter, I sought to formulate a deontological approach to intervention. Herein, I have demonstrated a basic deontological argument for intervention based on certain inalienable rights. By analyzing the rise of theories concerning human rights and their generated corresponding duties by Ross, Kant, Rawls, and others, I have shown how these duties to intervene are grounded in human rights. In addition, I showed that these corresponding duties are determined either by viewing intervention as a *prima facie* duty or as a maxim derived under the veil of ignorance.

Regardless of how these duties evolve from certain rights, I demonstrated the differences between duties we have from our relationships, contracts, and business (special duty) with duties that everyone shares (general duty). In discussing Hart's distinction between special and general duties, I have shown that the obligation picked out by a special duty does not vanish when the primary duty-bearer is unable to fulfil it. General duties obligate everyone. In addition, there might be special duties that obligate a secondary duty-bearer. States, like individuals, also have special and general duties. Their general duties correspond to universal human membership. When a states fails to fulfil its special duty, other states' general duties override.

In the face of human disaster, however, internationalism has a more urgent meaning. It is not possible to wait; anyone who can take the initiative should do so. Active opposition to massacre and massive deportation is morally necessary; its risks must be accepted.<sup>75</sup>

I have demonstrated that a realist argument for a principle of non-intervention is implausible. Denying evidence of an interdependent international community is counter-intuitive and goes against the realists' own theory of state self-interest. Stability, credibility, and the pursuit of a prominent international leadership role by conducting interventions when the violations are severe contribute to the interests of the intervening state. Additionally, there is little evidence to show that acknowledging and valuing human rights is contrary to a state's self-interest. Moreover, protecting these rights might be in the best interests of the state. "Thus if it can be shown that ... interventions can also be obligatory, then 'nothing to be gained by us' can no longer be a valid excuse for inaction."<sup>76</sup>

The deontological position is not flawless. Some problems remain unresolved. A principle of "ought implies can" cannot eliminate the possibility that small non-severe human rights violations might obligate the international community to a costly intervention. Furthermore, how do we judge the rightness of actions, specifically interventions? And, how can we resolve which duty takes precedence when faced with a scenario where duties collide? Although widely accepted, a deontological moral view is not universally accepted. Nevertheless, as UN Secretary-General Perez de Cuellar said in 1991, "the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively and systematically violated with impunity."<sup>77</sup>

## Notes

<sup>1</sup> Michael Leifer, "Vietnam's Intervention in Kampuchea: The Rights of States v. the Rights of People," in Political Theory, International Relations and the Ethics of Intervention, ed. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993) 145- 156; Seth Mydans, "In a Tiny Office, Khmer Rouge Files Tell Grisley Tales," The New York Times, 13 January 1999 and "Cambodia Says it Plans Trial for Jailed Khmer Rouge Leader," The New York Times, 8 March 1999; and Lewa Pardomuan, "Ta Mok Tried in Cambodia or Held Till Dead-Hun Sen," Reuters, 16 March 1999, [wysiwyg://7/http://nt.excite.com/news/r/990316/08/internaional-cambodia](http://nt.excite.com/news/r/990316/08/internaional-cambodia).

<sup>2</sup> Leifer, 145.

<sup>3</sup> Anthony Harvey, "Can an Intervention be Just?" in Some Corner of a Foreign Field, ed. Roger Williamson (New York: St. Martin's Press, Inc., 1998), 51.

<sup>4</sup> Harvey, 51.

<sup>5</sup> John S. Mill, "A Few words on Non-Intervention," 1875, discussed in Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 48.

<sup>6</sup> Quoted in Ramsbotham and Woodhouse, 48.

<sup>7</sup> Ramsbotham and Woodhouse, 60.

<sup>8</sup> "Declaration of the Rights of Man and of Citizens," adopted by the National Assembly of France in 1791. Thomas Paine, trans.

<sup>9</sup> "Declaration of Independance." Similarly, the "Constitution of Massachusetts" reads, "All men are born free and equal, and have certain natural, essential and unalienable rights."

<sup>10</sup> Kant Thoughts on a Perpetual Peace, supra note 1, at 113. Quoted in Fernando R. Teson, A Philosophy of International Law (Boulder, CO: Westview Press, 1998), 14.

<sup>11</sup> Kant Groundwork, supra note 1, at 54-6. Quoted in Teson, 14. Additionally, philosophers such as Bentham who did not recognize the universality of human rights believed in the necessity of ensuring that all individuals be treated fairly under the law. Bentham advocated an international legal system and envisaged a world "Common Court of Justicature," and suggested the idea that armed forces "furnished by the several states" should be used as a last resort "for enforcing the decrees of the court." Ramsbotham and Woodhouse, 48.

<sup>12</sup> World Conference on Human Rights, 1993, para. 5.

<sup>13</sup> Kok-Chor Tan, "Military Intervention as a Moral Duty," Public Affairs Quarterly vol. 9 no. 1 (Jan 1995): 30-1.

<sup>14</sup> Richard Little, "Recent Literature on Intervention and Non-Intervention," in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 25.

<sup>15</sup> R. M. Hare, "Rules of War and Moral Reasoning," Philosophy and Public Affairs (Winter 1972): 174. Hare ascribes a deontological title to Anscombe, Nagel, and Ross. See Anscombe's "War and Murder" in War and Morality, ed. Richard A. Wasserstrom (Belmont, CA: Wadsworth Pub. Co., 1970), 42-53, and Nagel's "War and Massacre," Philosophy and Public Affairs 1, no. 2 (1972): 123-144.

<sup>16</sup> J. E. Hare and Carey B. Joynt, Ethics and International Affairs (New York: St. Martin's Press, 1982), 22-49 (esp. 29, 34, 43). Also, see page 169. Also see Leo McCarthy, "International Anarchy, Realism and Non-Intervention," in Political Theory, International Relations and the Ethics of Intervention, ed. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 75-90.

<sup>17</sup> W. D. Ross, The Right and The Good (Oxford: Oxford University Press, 1930).

<sup>18</sup> Ross, The Right and the Good. Additionally, he includes the duty of non-maleficence.

<sup>19</sup> US Roman Catholic Bishop's Conference, The Harvest of Justice is Sown in Peace discussed in Roger Williamson, "An Ethical Framework – Or Just Intervention," in Some Corner of a Foreign Field, ed. Roger Williamson (New York: St. Martin's Press, Inc., 1998), 255.

<sup>20</sup> Anthony Hartle, "Humanitarianism and the Laws of War," Philosophy (January 1986): 109.

<sup>21</sup> Hartle, 113.

<sup>22</sup> Hartle, 113.

<sup>23</sup> Ross, The Right and the Good.

<sup>24</sup> US Roman Catholic Bishop's Conference, in Williamson ed., 255.

<sup>25</sup> Michael J. Smith, "Ethics and Intervention," Ethics and International Affairs 3 (1989): 1-26, and Mark R. Wicclair, "Rawls and the Principle of Nonintervention," in John Rawls' Theory of Social Justice, eds. H. Gene Blocker and Elizabeth H. Smith (Athens: Ohio University Press, 1980), 289-308.

<sup>26</sup> M. Smith, "Ethics and Intervention," 21.

<sup>27</sup> John Rawls, A Theory of Justice (Cambridge: The Belknap Press of Harvard University Press, 1971), 12, 17-22. Pierre Laberge, "Humanitarian Intervention: Three Ethical Positions," Ethics and International Affairs 9 (1995): 19.

<sup>28</sup> Rawls, 302. Laberge, 19.

<sup>29</sup> Rawls, 302. Laberge, 19.

<sup>30</sup> Rawls, 302. Laberge, 19.

<sup>31</sup> Laberge, 19. Rawls, §58, 378. Laberge outlines the subtle differences between the second stages of Teson and Wicclair.

<sup>32</sup> Wicclair's "Rawls and the Principle of Nonintervention," discussed in Laberge, 20.

<sup>33</sup> Laberge, 20.

<sup>34</sup> Laberge, 21.

<sup>35</sup> Thomas Pogge, "An Institutional Approach to Humanitarian Intervention," Public Affairs Quarterly, vol. 6 (January 1992), 93.

<sup>36</sup> Tan, 30-1.

<sup>37</sup> Gerard Elfstrom, "On Dilemmas of Intervention," Ethics 93 (July 1983): 718.

<sup>38</sup> Elfstrom, 718.

<sup>39</sup> Additionally, recent legislation has focused on protecting Good Samaritans from unforeseen consequences when the intervention unintentionally causes additional injury. For a discussion of the objection from unforeseen consequences, see Chapter 4.

<sup>40</sup> Elfstrom, 719.

<sup>41</sup> Elfstrom, 719-20.

<sup>42</sup> Dostoyevsky, The Brothers Karamazov quoted in David Fisher, "Some Corner of a Foreign Field," in Some Corner of a Foreign Field, ed. Roger Williamson (New York: St. Martin's Press, Inc., 1998), 33.

<sup>43</sup> H.L.A. Hart, "Are there any Natural Rights?" Philosophical Review, vol. 64 (1955): 175-91.

<sup>44</sup> Tan, 33.



<sup>45</sup> Of course, the swimmers must coordinate their rescue attempt. Competing attempts might jeopardize saving the drowning victim and might worsen the problem. I am merely stating that if one attempt fails, another should begin because the obligation remains —the man is still drowning.

<sup>46</sup> Tan, 35.

<sup>47</sup> Tan, 35.

<sup>48</sup> Tan, 36.

<sup>49</sup> Tan, 40.

<sup>50</sup> Elfstrom, 719.

<sup>51</sup> Elfstrom, 714.

<sup>52</sup> James Nickel, "How Human Rights Generate Duties to Protect and Provide," Human Rights Quarterly, vol. 15 (1993): 85, quoted in Tan, 32.

<sup>53</sup> Tan, 34.

<sup>54</sup> Tan, 31.

<sup>55</sup> Tan, 31.

<sup>56</sup> Williamson, "An Ethical Framework," 255.

<sup>57</sup> Hare and Joynt, 22-49. Cf. Hans Morgenthau, Politics Among Nations (New York: Knopf, 1985); Reinhold Niebuhr, Moral Man and Immoral Society (New York: C. Scribner's Sons, 1953); and George Kennan, American Diplomacy, 1900 – 1950 (Chicago: University of Chicago Press, 1984).

<sup>58</sup> M. Smith, "Ethics and Intervention," 6.

<sup>59</sup> Thomas Hobbes, Leviathan, Chapter XIII.

<sup>60</sup> Hans Morgenthau, "To Intervene or Not to Intervene," A New Foreign Policy for the United States (New York: Praeger, 1969), 117. Also quoted in M. Smith, "Ethics and Intervention," 7.

<sup>61</sup> Hare and Joynt, 169.

<sup>62</sup> Leo McCarthy, "International Anarchy, Realism and Non-Intervention," in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 76.

<sup>63</sup> Hare and Joynt, 25

<sup>64</sup> M. Foucault, "Face aux gouvernements, les droits de l'Homme," Liberation 22 (1984) quoted in Ian Forbes, "Beyond the State" in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark Hoffman (New York: St. Martin's Press, 1993), 225.

<sup>65</sup> Quoted in Ramsbotham and Woodhouse, 59.

<sup>66</sup> Hare and Joynt, 38.

<sup>67</sup> Michael J. Smith, "Humanitarian Intervention: An Overview of the Ethical Issues." Ethics and International Affairs 12 (1998): 71.

<sup>68</sup> Michael Walzer, "The Politics of Rescue," Dissent (Winter 1995): 38.

<sup>69</sup> M. Smith, "Humanitarian Intervention," 71.

<sup>70</sup> M. Smith, "Humanitarian Intervention," 71.

<sup>71</sup> Ernst B. Haas, "Beware the Slippery Slope: Notes toward the Definition of Justifiable Intervention," in Emerging Norm of Justified Intervention eds. Laura Reed and Carl Kaysen (Cambridge: Committee on International Securities Studies, 1993), 64.

<sup>72</sup> Haas, 64.

<sup>73</sup> Morgenthau, Politics Among Nations, 177. Discussed in Hare and Joynt, 40.

<sup>74</sup> M. Smith, "Ethics and Intervention," 9.

<sup>75</sup> Walzer, 38.

<sup>76</sup> Tan, 30.

<sup>77</sup> Quoted in Ramsbotham and Woodhouse, 60.

## CHAPTER 4

### A CONSEQUENTIALIST ARGUMENT FOR INTERVENTION

#### Introduction

The problem of determining whether to intervene in another nation's affairs is currently a "hot" topic in the media. On 18 June 1998, the New York Times published an article in its Editorial section titled, "The Kosovo Dilemma." The author, William Safire, analyzed the current situation in Kosovo and proposed intervention as a solution to the growing problems there. He suggested that only by a credible show of force, such as NATO air strikes, will the Serbian government stop their "bloody crackdown" in Kosovo. Additionally, Safire said that we should tell the Albanians in Kosovo that the air strikes are not meant as cover for their secession, but as an international intervention to end the "ethnic cleansing." He proposed that if diplomacy and other negotiations fail to bring peace to the region of Kosovo, intervention may be the only solution.<sup>1</sup> Although, what Safire recommends is military intervention, the intent of the intervention is humanitarian in nature – ending the ethnic cleansing.

While the decision to intervene is being debated in the media and in both the legal and political arenas, as of late, the issue of military intervention<sup>2</sup> for humanitarian reasons has not received much attention in moral philosophical circles. This has not always been the case. Several books and articles published during the Vietnam conflict tried to answer questions concerning the legitimacy of the United States' involvement in Vietnam. During the Seventies, philosophers posed deontological and consequentialist arguments both for and against U.S. involvement in South East Asia.<sup>3</sup> In addition, during

this time, Michael Walzer published his influential book, Just and Unjust Wars, which provided a non-interventionist argument against U.S. involvement by contrasting the Just War Tradition with a peoples' right to self-determination.<sup>4</sup> Lately, however, the focus of ethical discussions has shifted elsewhere, and the question of intervention has been left largely to political philosophers. Furthermore, large portions of moral writings recently published on the question of intervention are limited to deontological theories. They are interpretations and applications of deontological normative ethics and concern themselves with whether an intervention can be obligatory because it would be wrong not to intervene (to help others, to end conflict, to protect human rights, etc.).<sup>5</sup>

What has been lacking in this limited philosophical discussion of intervention is a consequentialist point of view on the question of intervention. This does not mean that recent discussions have ignored the various consequences of an international intervention. Rather, these discussions have been focused on whether we as fellow human beings have a duty to intervene to prevent or end such atrocities as the "ethnic cleansing" in the former Yugoslavia, the starvation and anarchy in Somalia, and the genocide in Rwanda. This duty follows from suggested theories that, for example, (1) intervention is a morally right act, or (2) failure to stop "ethnic cleansing" and genocide is wrong.

An intervention to "save" or "protect" our fellow man from such human rights violations has a large appeal to both deontological and consequentialist advocates of human rights. Kok-Chor Tan writes:

Human rights are, after all, the claims of all of humanity on all of humanity. Respect for human rights generates ... duties to protect from

deprivation, and duties to aid the deprived. Thus if members of the international community take human rights seriously enough (enough to ratify and endorse them), then it appears that *they have a prima facie moral obligation to ensure the effective exercise of these rights*. (my emphasis).<sup>6</sup>

However, the obligation to intervene need not be entirely a question of moral law, an appeal to a Kantian categorical imperative, causal responsibility, or even a fulfillment of a contract. The international community may have an obligation to intervene based solely on the consequences (or resulting state of affairs).<sup>7</sup>

I believe that sometimes the international community is obligated to intervene. However, I suggest that this obligation can also exist on the basis of the consequences of intervention, not on the notion that any failure to protect human rights is wrong, etc. A consequentialist may support intervention based on a theory involving human rights. She could say that it is morally obligatory to perform acts that lead to the greatest human rights protection. However, a deontologist might say that violating human rights is wrong and any act that prevents this violation is our duty – regardless of the consequences.<sup>8</sup> To show that intervention could be consequentially obligatory, I will first outline the consequentialist framework that I will use. Next, I will describe how to evaluate the consequences of intervention. Then, I will build from simple examples to demonstrate how an intervention would be obligatory. Additionally, I will address some potential shortcomings of a consequentialist view: an objection of potential unforeseen consequences and an objection regarding the problem of providing continuing aid.

“Wait a minute,” some opponents of intervention are already saying, “surely he cannot mean that every intervention is obligatory!” This might lead to the following *reductio ad absurdum*:

If one ought to intervene in country A, one ought to intervene in country B, C, D, E, .... It would be impossible to intervene in A, B, C, D, E ....  
One only ought to do what one can do. (“Ought” presupposes “can.”)  
Therefore, one ought not to intervene in country A.<sup>9</sup>

My answer is, of course not. Not every situation warrants an intervention. Some interventions are obligatory while others are not. Whether or not to intervene is based on the consequences of that intervention. Accordingly, some interventions will have “better” consequences than others. Thus, I will also show that the first premise is false, that intervening in countries B, C, D, E, ... does not follow from intervention in country A. By using a consequentialist theory, we can certify when an intervention is obligatory.

#### A Consequentialist Framework

In order to evaluate whether intervention is obligatory, I suggest evaluating the proposed intervention in terms of the resulting state of affairs. Thus, I will use Fred Feldman’s world theory consequentialism. His world theory version of consequentialism can be summarized as WTC:

WTC: a person, S, ought to see to a state of affairs, P, as of time, t1, iff P is true of all of S’s best worlds at t1.<sup>10</sup>

Of all the possible worlds (worlds that are actualizable) accessible to S at time, t1, certain worlds are “better” than other worlds. They have a higher “moral” value. For example,

if a world includes a state of affairs, P, has a higher value when compared to a world that does not include P, the worlds that include P are “best” worlds.

However, in order to apply the world theory to international intervention, we need to assume a Hegelian-type theory that the state could function as a person.<sup>11</sup> Thus, assuming states act as individuals and amending WTC, we have WTC’:

WTC’: a *state*, S, ought to see to a state of affairs, P, as of time, t1, iff P is true of all of S’s best worlds at t1.

Application of WTC’ to certify whether a particular intervention is obligatory is not difficult. If a state of affairs includes intervention and is true in all of the agent’s best worlds, then the agent ought to see to that state of affairs and intervene. Conversely, if a state of affairs includes non-intervention and is true in all of the agent’s best worlds, then the agent ought to see to that state of affairs and not intervene. To explore the application of WTC’ to intervention further, I will discuss two examples: a case of personal intervention (WTC) and a case of international intervention (WTC’).

Tim and Kristen are both dining out at the same restaurant but have never met. Suppose that Tim sees Kristen apparently choking on a bone across the room. Kristen’s face is blue and she is wheezing and clutching her throat. For simplicity, let us assume that there are two states of affairs available to Tim, P and P’. The state of affairs P includes Tim performing the Heimlich maneuver on Kristen, while P’ does not include any assistance for Kristen; Tim just continues eating. WTC states a person, S, ought to see to a state of affairs, P, as of time, t1, iff P is true of all of S’s best worlds at t1. As it so happens, for Tim, the state of affairs P was true at his best worlds while P’ was not true at his bests. Seeing her distress, Tim rushes over and performs the Heimlich

maneuver on her, thereby freeing the stuck chicken bone and saving Kristen's life.

Alternatively, if P is not true at Tim's best worlds and P' is true, Tim ought to see to P' and not assist Kristen.

Notice that Tim's action is a form of intervention at the individual level. He intervened in Kristen's life by administering the Heimlich and saving her life. Recall that if a state of affairs includes intervention and is true in all of the agent's best worlds, the agent ought to see to that state of affairs and intervene. However, if a state of affairs includes non-intervention and is true in all of the agent's best worlds, the agent ought to see to that state of affairs and not intervene. For Tim, the state of affairs P (intervene on behalf of Kristen) was true at his best worlds while P' (not intervening) was not true at his best worlds. Thus, Tim ought to see to P and intervene; seeing to P is obligatory for Tim. On a personal level, WTC provides a working illustration for determining that Tim should intervene to help Kristen. Next, I will describe a case at the international level to demonstrate that WTC' works for intervention into another state.

Assume there are two states: Beta and Alpha. Beta's neighbor, Alpha, is undergoing a civil war. Beta's borders are flooded with mass deportations and refugees fleeing the fighting in Alpha. Additionally, there are rumors of "ethnic cleansing." Philosophers Teson, Tan, and Elfstrom, would suggest there may be an obligation for Beta to intervene because failing to protect the human rights of Alpha's citizens,<sup>12</sup> or failing to prevent the threat to their own national security,<sup>13</sup> is wrong. However, Beta may be obligated to intervene from a consequentialist point of view, as well. Again, for simplicity, let us assume that Beta has two states of affairs, P and P'. The state of affairs P includes intervention to end the civil war, stop the flow of refugees, and provide



humanitarian aid.  $P'$  does not include intervention or a provision for assistance to the citizens of Alpha. According to  $WTC'$ , a state,  $S$ , ought to see to a state of affairs,  $P$ , as of time,  $t_1$ , iff  $P$  is true of all of  $S$ 's best worlds at  $t_1$ . For Beta, the state of affairs  $P$  is true at its best worlds while  $P'$  is not true at its best worlds. Beta mobilizes and intervenes, ending Alpha's civil war. Under  $WTC'$ , if a state of affairs includes intervention and is true in all of the agent's (in this case Beta's) best worlds, then the agent ought to see to that state of affairs and intervene.

Nevertheless,  $P'$  might have been true at Beta's best worlds, not  $P$ . If, in the case of  $WTC'$ , intervention was not part of the state of affairs that was true at Beta's best worlds, intervention would not be obligatory. If a state of affairs includes non-intervention and is true in all of the agent's best worlds, then the agent ought to see to that state of affairs and not intervene. This last example illustrates why only certain interventions would be obligatory. Deciding to intervene is based on which state of affairs is true at Beta's best worlds. Contrary to an example of a deontological theory, which might suggest that states are forbidden to fail to protect human rights, Beta does not have an obligation to intervene. In this case, the obligation is based entirely on the states of affairs. This point will become more important during my discussion of some of the objections to intervention.

Both proponents of intervention and opponents of intervention will ask how one can evaluate the consequences of intervention. For theory  $WTC'$ , evaluating consequences becomes a question of determining the best worlds for  $S$ . Unlike traditional Hedonic Act Utilitarianism, World Theory does not directly involve particular consequences themselves. A Hedonic Act Utilitarian state would count the total hedons

and dolors of the consequences to determine if intervention is obligatory. Next, the state would need some axiology defining what qualifies as a hedon and dolor amount. States could have misapplied axiologies, thus, making it difficult to determine how to evaluate the consequences of intervention. Misinterpreting the axiology may result in states applying different perceived values to the act of intervention. World theory avoids this difficulty. By focusing on the state of affairs true at its best worlds, a state can discover whether intervention is obligatory for itself.

By evaluating states of affairs that include intervention, states can use WTC' to determine when to intervene and when they are obligated to refrain.<sup>14</sup> However, applying WTC' (or other consequentialist theories) to the potential obligation of intervention can be controversial and open to objection. Therefore, I will next discuss two major consequentialist-type objections to interventions. By outlining these objections and providing some solutions, I will show that consequentialism may obligate states to intervene, and that WTC' is the correct theory to use.

One objection focuses on the premise that if we ought to intervene in one country, we should intervene in all other countries. The other objection concerns the follow-on or future consequences that are unforeseen at the time of decision that may arise during the intervention or at the conclusion of the intervening mission. I believe that both objections are incorrect and, under a certain interpretation, involve slippery slope fallacies.

### If A State Intervenes In One Country, It Must Intervene In Others?

The first objection I will discuss is the *reductio* previously mentioned in my introduction. David Fisher discusses this objection in his paper, "Some Corner of a Foreign Field." Although he does not attribute this argument to any particular individual, he suggests that it typifies the objections of the "man in the street" as well as much of today's political rhetoric opposing intervention. This objection can be summarized as follows:

OBJ1: If one ought to intervene in country A, one ought to intervene in country B, C, D, E, .... It would be impossible to intervene in A, B, C, D, E .... One only ought to do what one can do. ("Ought" presupposes "can.") Therefore, one ought not to intervene in country A.

An opponent of intervention might ask, "How do we escape being drawn down a slippery slope towards involvement in all kinds of interventions?" This is, on the surface, a reasonable question. However, OBJ1, although valid, is not sound. Part of the fallacy of OBJ1 is that it has several different interpretations. Initially, a proponent of OBJ1 might be considering a case in which intervention in each country has the same value of consequences. Furthermore, even if we grant the assumption that each intervention has the same consequential value (the states of affairs that include the intervention are all in the state's best worlds), OBJ1 still has different interpretations. These are based on the time of the decision whether to intervene and when the intervention should occur.

The opponent of intervention may suppose that since the state was obligated to intervene now, the state will later be obligated to intervene in another state. However, this objection is a non sequitur. Since the decisions to intervene occur at different times,

they are separate decisions with differing consequences. Thus, each decision is a new problem where WTC' applies only to the situation at that time.

Consider the case where a state, S, is considering whether to intervene at a certain time, t<sub>1</sub>. If a state of affairs, P, involves intervening in A and is true of all of S's best worlds at t<sub>1</sub>, then S should bring about P (intervene in A). At a later time, t<sub>2</sub>, if a state of affairs, P', involves intervening in B and is true of all of S's best worlds at t<sub>2</sub>, then S should bring about P' (intervene in B). However, at a different time, t<sub>3</sub>, if a state of affairs, P'', involves intervening in C but is not true of all of S's best worlds at t<sub>3</sub>, then S should not bring about P'' (not intervene in C). While intervening in A and intervening in B were obligatory for S, intervening in C is not obligatory for S. The state of affairs that contain intervention in A is different from the states of affairs when determining whether to intervene in B or C. Even in a case where S is obligated to intervene in C, the obligation did not follow *eo ipso* from S's obligation to intervene in A and B. Therefore, if the objector suggests that if one intervenes now, she must intervene later, the first premise that if one ought to intervene in country A, one ought to intervene in country B, C, D, E, ... is false.

An objector may consider that the consequences for intervening in each country are equal and the decision to intervene occurs at the same time. If this is the objection, then I would respond by pointing out that intervening in B, C, D, E, ... are nothing but alternative states of affairs to one that includes intervention in A and the *reductio* breaks down. The state can chose to intervene in A, B, or C. Assuming all alternatives are equal, it does not necessarily follow that S must pursue all alternatives. That would be

absurd. If S is obligated to intervene in some countries, but not others, the consequentialist would say, "so be it."

The objector may also want to argue that it would be impossible to intervene in A, B, C, D, E .... In the first place, for OBJ1 to work in this hypothetical case, S must be obligated to intervene in all of the countries. Should the states of affairs all be true in S's best worlds, the state may find itself in the predicament of being obligated to intervene in all the countries. However, this rational is faulty. Obviously, intervention in more than one state would introduce more than one different states of affairs. There may be the individual state of affairs of intervening in A, the state of affairs of intervening in B, the state of affairs of intervening in C, ..., but there could be states of affairs that include some combinations of interventions and there could also be an alternative state of affairs that involves intervention in all the states, { A, B, C, D, E, ..., }.

Consider a case where there are only four states: S, A, B, and C. State, S, is considering whether to intervene at a certain time, t1, in state A. If a state of affairs, P, involves intervening in A and is true of all of S's best worlds at t1, then S should bring about P (intervene in A). If a state of affairs, P', involves intervening in B and is true of all of S's best worlds at t1, then S should bring about P' (intervene in B). Additionally, if a state of affairs, P'', involves intervening in C and is true of all of S's best worlds at t1, then S should bring about P'' (intervene in C). At this point, S must also consider P''' which involves intervention in A, B, and C. Does it necessarily follow that S must intervene in A, B, and C? What if the national budget of S included money enough for only two interventions? One might be tempted to argue that P''' is not true at all of S's best worlds at t1. Therefore, S would not be obligated to bring about P'''. However, this

seems to yield a contradiction. S is obligated to intervene in A, intervene in B, and intervene in C, yet not obligated to intervene in A, B, and C? This case seems logically impossible. A look into the national treasury does not remove the logical truth that P''' must also be true at all of S's bests. Perhaps the objector is taking a different approach – one that deals with the logistical problems of multiple interventions.

Besides the states of affairs involving intervention in each country being of equal value (true at S's best worlds) and the decision to intervene occurring at the same time, the objector is posing a situation where the interventions occur simultaneously. If this is the case, intervention in A, B, C, D, E, ... at the same time may indeed be impossible. However, it would be impossible for other reasons, such as the political situation or logistical constraints. A consequentialist may agree that it would be logistically impossible or politically impossible to intervene simultaneously (this would not necessarily affect obligation). However, if the state of affairs includes intervention in A, B, C, D, E, ... is true at the state's best worlds, as long as the state brings about the state of affairs that includes intervention in A, B, C, D, E, ..., the actual interventions can occur at different times. In this case, the interventions are not time dependent. As long as the state of affairs actualized, the obligation (to bringing about P''') will be met.

Therefore, OBJ1 does not pose a serious threat to a consequentialist evaluation of intervention using WTC'. Intervention in B, C, D, E, ... does not follow from intervention in A. Neither the time of decision nor the time of intervention matters. Additionally, when considered together, the highly unlikely state of affairs that would involve simultaneous intervention in all states: A, B, C, D, E, ... does not pose difficulties for the consequentialist state. World theory merely says that whenever a state

of affairs is true at its best worlds, the state is obligated to see that it is actualized. Thus, whenever a state of affairs includes intervention and is true at its best worlds, the state is obligated to intervene.

### Objection from Unforeseen Consequences

Another form of objection arises from the possibility that some action, such as intervention, would have some unforeseen negative consequences. Julia Driver discusses an example of why one should not intervene because of the unforeseen bad consequences in her paper, "The Ethics of Intervention." Consider the previous Heimlich maneuver example with some different conditions. Suppose that Tim sees Kristen apparently choking on a bone in a restaurant. Kristen's face is blue and she is wheezing and clutching her throat. Seeing her distress, Tim rushes over and performs the Heimlich maneuver on her, accidentally breaking a couple of Kristen's ribs. Unbeknownst to Tim, Kristen was not choking, but merely acting out her part in a play for her friends. Furthermore, Kristen will not be able to perform in the play with broken ribs. Tim's actions had the unintended effect of ruining Kristen's playhouse debut.<sup>15</sup>

Tim's seemingly "good" act of saving Kristen's life had the unforeseen "bad" consequence of injuring her. Similarly, the decision to intervene in the former Yugoslavia by conducting an arms embargo had some negative consequences. It seems that the embargo did succeed in limiting the import of weapons into Bosnia and in stemming the spread of the conflict to neighboring states. However, the embargo negatively affected one side (the Moslems). The Moslem forces were unable to obtain any heavy weapons during the embargo and, therefore, were unable to resist the Bosnian Serb attacks. The Serbs had numerous heavy weapons they had obtained from the former

Yugoslavian Army.<sup>16</sup> Assuming that the arms embargo was true at the best worlds, the resulting state of affairs (including the unforeseen consequences) was still obligatory.

Although some examples posed by this objection seem to illustrate a legitimate concern, I feel that an objection based on potential unforeseen consequences is unfounded. Furthermore, both WTC and WTC' require that the agent ought to see to a state of affairs, *P*, *as of time, t1*, iff *P* is true of all of the agent's best worlds *at t1*. The time that *S* needs to see to a particular *P* is at a particular time – in this case *t1*. The state of affairs *P* (intervene on behalf of Kristen) was true at Tim's best worlds while *P'* (not intervening) was not true at his best worlds. Which state of affairs is true at Tim's best worlds determines what is obligatory for Tim under WTC. Tim does not decide which state of affairs is better for him. Similarly, in the case of the arms embargo, *S* (in this case the UN and NATO) ought to have intervened with the arms embargo in accordance with WTC'. The state of affairs *P* (intervene to prevent the spread of conflict through increase in numbers of weapons) was true at *S*'s best worlds while *P'* (not intervening) was not true at *S*'s best worlds. The popular saying is that, "hindsight is always twenty-twenty." The intervention later (say at *t2*) may not have obligated the state because of some other unforeseen bad consequences. However, it does not necessarily follow that intervention was not obligatory at *t1*.

#### The Problem of Continuing Aid

Driver also mentions a different objection. When conducting an intervention, there may be a potential problem with follow-on assistance, or what she calls "continuing aid." The completion of the initial intervention – including fulfilling the specified and agreed upon objectives – may not shield the agency from further obligations. This could



lead the intervention down a slippery slope where continuing commitments may never end. "Acts that begin in armed humanitarian intervention ... can escalate to peacekeeping, peacemaking, and the installation of democratic governments."<sup>17</sup> On the other hand, the intervention could fail and the obligation would be unfulfilled. Apart from the difficulty that the agent may be obligated to continue aid when an intervention fails, the agent may be further obligated for continuing aid upon the successful completion of the initial mission.<sup>18</sup>

The best example of the continuing aid problem (a "slippery intervention") is the intervention in Somalia. Because of the problems during the intervention in Somalia, fear over the inability or unwillingness to continue aid has caused a kind of paralysis in the international community. This type of paralysis has led the U.S. government and the UN to become victims of what is being termed the "Somalia syndrome." The Somalia syndrome is a "fear of committing international forces to ill-defined missions of humanitarian intervention."<sup>19</sup> This international fear grew from the aborted UN humanitarian mission in Somalia. It is generally agreed that the initial UN humanitarian intervention in Somalia was successful. Tens of thousands of people were spared starvation and limited order was restored.<sup>20</sup> However, conditions on the ground changed with the passage of SCR 837, a UN resolution designed to disarm all the factions. The mission changed and the peacekeepers now found themselves peace-enforcers. They were even involved in the capture of the leader of one faction. The Somali warlord, Aidid, organized attacks on the peacekeepers, specifically Pakistani, Italian, and Moroccan soldiers. Aidid was wanted by the UN command for the death of twenty-four Pakistanis. A failed U. S. mission to capture Aidid, which resulted in the deaths of

eighteen U.S. soldiers and loss of life among other UN forces and civilians during previous attacks, resulted in participating states withdrawing their forces from Somalia.<sup>21</sup>

The problem of continuing aid, although a political and logistical concern, is in reality a slippery slope argument and is fallacious. Ernst Haas describes the continuing aid problem of intervention in his article, "Beware the Slippery Slope." He writes:

What if the misery is exacerbated by the kinds of conflict between government and insurgents in which relief supplies are hijacked and relief workers are killed? Then effective rescue measures call for UN enforcement to ensure delivery of the supplies to the intended beneficiaries. What if the enforcers cannot do their jobs unless the civil war ends? In that case the UN must seek to mediate an end.... [E.g. in Bosnia and Somalia] The next possible steps include holding an election ... to be followed by drafting a constitution .... Organizing and monitoring the elections calls for educational measures.... In the event of a failure of democratic consolidation – a very likely event – there will surely be a call for multilateral sanctions to impose democracy.<sup>22</sup>

Each step is, of course, highly speculative. Furthermore, although each step of converting to enforcement, then mediation, then monitoring seems intuitive, these steps do not necessarily have to follow one another. Other intermediate steps may lie in-between. Additionally, steps like civil war mediation may not be required. Each intervention is different, with different circumstances. Using Haas' example as an argument for non-intervention would be incorrect. The inevitability that civil war mediation follows from enforcement may be intuitive but there is no evidence that it is logical.

Assuming, however, that Haas' example has substance, a consequentialist would analyze the example in one of two ways. Initially, she could consider the possibility that all of the steps (enforcement, mediation, monitoring, sanctions, ...) do follow from one to another. In this interpretation, the steps are all part of the same state of affairs that included the intervention. If the state of affairs included intervention, followed by enforcement, mediation, monitoring, and then sanctions, was true at her best worlds at  $t_1$ , then she is obligated to intervene and perform the "continued aid" as part of the same state of affairs.

However, this particular combination of steps of continuing aid may not occur in the same order, or occur at all. Furthermore, in the case of the Somalia syndrome, participating states might argue that any state of affairs that included intervention, followed by enforcement, mediation, monitoring, and then sanctions would not be obligatory for them. They may even choose to ignore the possibility that an intervention is obligatory. The inability to continue aid to the Somalis and the discontinued delivering of humanitarian assistance has caused the U.S. and the UN to question whether intervention is a morally right alternative. Driver says that:

... it would be morally problematic for the U.S. to interfere in difficult conflicts, even when it is clear which side is right. Of course, the reluctance to interfere will have many sources. But surely at least one concern at the root of the reluctance is a concern that the U.S. could get drawn into a long, bitter, deadly struggle if initial modest efforts fail.<sup>23</sup>

A consequentialist might approach Haas' example differently, and perhaps alleviate Driver's concerns that the risk of continuing aid could prevent intervention. At  $t_1$ , the state of affairs that includes intervention may be obligatory for the state. The state

of affairs may even include enforcement to ensure the delivery of humanitarian aid. Negotiating a peace settlement and monitoring elections might be a different state of affairs at  $t_2$ . At  $t_2$ , if negotiating a peace, monitoring elections, and even pursuing international criminals is a part of the state of affairs true at the state's best worlds, the state ought to see to that state of affairs. If not, then the state can withdraw as the UN forces did in Somalia.

### Conclusion

In this chapter, I provided a consequentialist look at the problem of intervention. Although many might use the perceived negative consequences of intervention to object to any intervention, I believe that intervention can result in many good consequences. By evaluating the consequences of intervention, a state can determine when to intervene. Furthermore, by using a world theory of consequentialism, as WTC', the state avoids the pitfalls involving acts, various weights of consequences, and misapplication of the axiology that plague other traditional consequentialist theories such as utilitarianism.

Additionally, WTC' should be very useful for those who think that intervention in general may at times be obligatory, but are concerned that once intervention is condoned in one case, it opens the possibility for mass cases of intervention (some of which may be for the wrong reasons). Intervention in one state does not open the way for intervention in any state. The state may not be obligated to intervene in other states or may not be obligated to intervene at all. If the state of affairs including the intervention in question is not true at the state's best worlds, then the state is not obligated to intervene and should not intervene.

The deontologists are correct when they suggest that there is something repulsive about mass starvation, ethnic cleansing, and genocide. However, continuing aid and a mandate to intervene in every conflict may pose problems for their theories and for states who follow their thinking. Intervening solely because it is the state's duty, or intervening because it is the duty of all of us to protect human rights, may, indeed incur the burden of Haas' slippery slope or open cases of widespread, yet obligatory, intervention.

Furthermore, a duty to intervene seems to form the basis of Driver's concerns over what I described as the Somalia syndrome. Treating the decision to intervene from a consequentialist point of view negates these worries. Each state of affairs that involves intervention is evaluated as true at the state's best worlds separately from the other states of affairs that do not involve intervention. In addition, the state of affairs that involves intervention and enforcement will be different from a state of affairs that includes intervention and the mediation of a peace settlement, but lacks an enforcement role.

Treating the question of intervention through consequentialism allows states to intervene and stop atrocities within their political and logistical constraints.

## Notes

<sup>1</sup> As I completed writing this chapter, it seems that the threat of NATO air strikes convinced Milosovic to remove his forces from the province of Kosovo. This result has been only temporary. In March 1999, NATO began air strikes to force the Serbs back to diplomatic talks to try and resolve the issue of Kosovo autonomy and end Serb atrocities in Kosovo.

<sup>2</sup> By intervention, I am referring to the definition: Intervention =<sub>df</sub> an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights. In addition, I will define a "humanitarian intervention." as Humanitarian Intervention =<sub>df</sub> an intervention authorized by relevant organs of the internationally recognized authority where states are voting members for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights; such that this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means. See Chapter 2.

<sup>3</sup> Richard B. Brandt, "Utilitarianism and the Rules of War," Philosophy and Public Affairs (Winter 1972): 145-165; R. M. Hare, "Rules of War and Moral Reasoning," Philosophy and Public Affairs (Winter 1972): 166-181; Richard G. Henson, "Utilitarianism and the Wrongness of Killing," The Philosophical Review (July 1971); and Thomas Nagel, "War and Massacre," in War and Moral Responsibility, eds. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton: Princeton University Press, 1974).

<sup>4</sup> Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977).

<sup>5</sup> Some of these recent publications include Julia Driver, "The Ethics of Intervention," Philosophy and Phenomenological Research LVII, no. 4 (December 1997): 851-870; Gerard Elfstrom, "On Dilemmas of Intervention," Ethics 93 (July 1983): 709-725; Pierre Laberge, "Humanitarian Intervention: Three Ethical Positions," Ethics and International Affairs 9 (1995): 15-36; Michael J. Smith, "Ethics and Intervention," Ethics and International Affairs 3 (1989): 1-26 and "Humanitarian Intervention: An Overview of the Ethical Issues," Ethics and International Affairs 12 (1998): 63-79; and Kok-Chor Tan, "Military Intervention as a Moral Duty," Public Affairs Quarterly vol. 9 no. 1 (Jan 1995): 29-46.

<sup>6</sup> Tan, 31.

<sup>7</sup> Actually, much of the rhetoric proposing or opposing intervention appeals to the "dire possible consequences."

<sup>8</sup> I am not addressing the major differences between deontological and consequential theories, nor am I arguing that one is more valid than the other. That is a

different discussion for another forum. However, I am trying to show that there are both consequentialist and deontological arguments for intervention.

<sup>9</sup> David Fisher, "Some Corner of a Foreign Field," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998).

<sup>10</sup> WTC comes from notes on a discussion about world theory consequentialism during a philosophy seminar on consequentialism, 30 September 1998. In choosing WTC as the consequentialist theory for my discussion, I avoided some of the pit-falls of standard consequentialist theories such as Hedonic Act Utilitarianism and Act Alternative Consequentialism. These objections include time relativation, non-act obligation, and temporal objections.

<sup>11</sup> Whether a state or any other group can function as an individual and be liable as an individual is a topic too large for this discussion. However, in this paper I am assuming that a state can function as an individual.

<sup>12</sup> Teson, 25; Tan, 31, 39, 41; and Elfstrom, 723, 725.

<sup>13</sup> Teson, 52-3 and Elfstrom, 715.

<sup>14</sup> One of the problems with consequentialism is that it is unlikely that anyone would ever be able to use the theory (or its many forms) to determine what she ought to do. Although I believe this problem cripples a consequential view of morality, consequentialist theories have merit. Common sense dictates at least attempting to evaluate the consequences of our actions despite the problem of limited practical application of consequentialist theories. However, since I am neither advocating nor condemning consequentialism here, I will be optimistic and assume that one day someone will discover how to practically apply consequentialist theories. Thus, agents can "use" WTC to identify which state of affairs they ought to pursue. Thanks to Prof. Feldman for describing this problem during a review of my manuscript.

<sup>15</sup> Driver, 869.

<sup>16</sup> Cf. Anthony Parsons, "The UN – Peace and Security," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 250; Kori N. Schake "The Breakup of Yugoslavia," in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 95-118; and Richard J. Regan, Just War: Principles and Cases (Washington D. C.: The Catholic University of America Press, 1996), 192-211.

<sup>17</sup> Ernst B. Haas, "Beware the Slippery Slope: Notes toward the Definition of Justifiable Intervention," in Emerging Norm of Justified Intervention, eds. Laura Reed and Carl Kaysen (Cambridge: Committee on International Securities Studies, 1993), 66.

<sup>18</sup> Furthermore, once aid is given, it should not suddenly cease. Driver writes: "... [that there] is a widely held view, especially in medical ethics, that once aid is given it cannot be withdrawn." See page 866.

<sup>19</sup> Comfort Ero and Suzanne Long, "Rwanda: The Media and the Message," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 175.

<sup>20</sup> UNITAF mandated under SCR 794 and Operation Restore Hope.

<sup>21</sup> See Regan, 172-191 (esp. 186) and for further reading see also Walter Clarke and Jeffery Herbst eds., Learning from Somalia: the Lessons of Armed Intervention, (Boulder CO: Westview Press, 1997); April Oliver "The Somalia Syndrome," in Breaking the Circle: A Framework for Conflict Intervention, ed. Roderick von Lipsey (New York: St. Martin's Press, 1997), 119-146; and Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 205-215.

<sup>22</sup> Haas, 70.

<sup>23</sup> Driver, 865.



## CHAPTER 5

### INTERVENTION AND THE JUST WAR TRADITION

#### Introduction

One cannot turn on the television or pick up a newspaper without being assaulted by the tragic loss of life caused by conflict in different corners of the world. In 1994, over 500,000 Tutsi men, women, and children were massacred in Rwanda.<sup>1</sup> During the fighting in Bosnia-Herzegovina, the Office of the UN High Commissioner for Refugees (UNHCR) estimated that thirty to forty people died each day from the fighting or from lack of medical supplies.<sup>2</sup> Pictures from ITN and CNN showed the suffering of tens of thousands of refugees that fled the fighting in both Bosnia and Rwanda. In fact, as of 1995, there were over forty different states involved in internal or international conflict.<sup>3</sup> However, in that same time period, there have been only a limited number of humanitarian interventions to stop the mass suffering. In spite of the media coverage and our deep sense of morality, we are reluctant to get involved. Even after the formation of the United Nations in 1947 to prevent such conflict and suffering, it is hard to believe that someone in the international community has not intervened to stop or prevent these tragedies.

The problem is, of course, more complicated than it seems on the surface. International intervention,<sup>4</sup> by any workable definition, involves the intrusion of forces, supplies, and/or observers into the territory of another state. Intervening into the affairs of another state has often been condemned as a violation of that state's sovereignty.

The issue of sovereignty violation is not a modern development. Since the seventeenth century, through the teachings of de Vittoria and Grotius, states have recognized each other's right to sovereignty.<sup>5</sup> Today, the Charter of the United Nations protects this notion of sovereignty. Article 2(7) states that no nation can "intervene in matters which are essentially within the domestic jurisdiction of any state."<sup>6</sup> Apart from the international legal position of a state's right of sovereignty, Hegel and other philosophers have suggested that states also enjoy the right of moral autonomy in addition to sovereignty. Elfstrom proposed that, "nation-states themselves possess a moral autonomy analogous to the moral autonomy possessed by individual human beings. The moral autonomy of the nation-state is founded upon the collected moral autonomy of each of its individual citizens."<sup>7</sup> A state's right to sovereignty is well grounded in history, legal precedence, and in political philosophy. Any attempt to justify intervention must first consider the notion of sovereignty and demonstrate why the international community should set aside a state's sovereignty.

Despite the protection of a state's sovereignty, the horrors of human suffering demand some action from us. On one extreme, international humanitarian intervention in every conflict would be implausible due to the monetary, material, and personnel commitment. However, it seems reasonable to intervene in extreme cases, or in cases where vital national interests are at stake. Thus, in order to justify an intervention, some type of convention must be made. For example, we might formulate a set of rules, conditions, or circumstances that would have to be satisfied, in order to intervene. Regardless of which convention we adopted, guidelines for intervention would need to account for the issue of sovereignty.

However, instead of inventing some new rules governing intervention, I suggest that we use the tenets of the Just War Tradition to justify intervention. Using the Just War Tradition has several advantages. It is well documented, socially and theologically acceptable, and it has been successfully used to address a number of justified sovereignty infractions. The tenets of the Just War Tradition are not uncontroversial. However, these tenets can provide a framework from which the international community (specifically the United Nations) can determine when a state has forfeited its right to sovereignty, when the UN can set aside Article 2(7), and when they can conduct a humanitarian intervention. The question is, "Can the *bellum justum* tenets accommodate the various considerations of intervention?"

I think the answer is "yes." I believe that by justifying their actions through the Just War Tradition, the UN can selectively intervene in other states. To show that the *bellum justum* tenets can provide justification for intervention, I will begin with a brief explanation of the Just War Tradition. My explanation will include both the conditions for deciding to wage war (*jus ad bellum*) and the conditions for the conduct of war (*jus in bello*). Next, I will examine each tenet in turn to demonstrate how the Just War Tradition, specifically the conditions for *jus ad bellum*, can be applied to intervention. Furthermore, I will show that the tenets that govern conduct in war (*jus in bello*) can also apply to the intervening forces. Throughout, I will also discuss the various objections that have been raised against the Just War Tradition tenets, as well as some objections that opponents of intervention might raise in opposition to the Just War Tradition as a framework for intervention. Specifically, I will address the objection to intervention

based on the violation of sovereignty, and then show how states can forfeit this right, thereby legally and morally opening their borders to intervention.

### The Just War Tradition

Although the Just War Tradition was developed from early Christian thought, one can trace the history of the Just War Tradition as far back as the Fifth century BC in China, where warlords developed rules for combat. In fact, codes of conduct for battle and rules of war are found within the historical background of many different cultures.<sup>8</sup> Nevertheless, St. Augustine is commonly recognized as the “Father of the Just Warfare Tradition.” Augustine dealt with the first concepts of *bellum justum* regarding the apparent conflict between the rules of Heaven and the rules of Rome. Augustine attempted to reconcile the apparent pacifist teachings of Jesus in the New Testament with the legal obligation of early Christians to fight in their country’s (in particular, Rome’s) wars. Although in Christian doctrine, it was *prima facie* wrong to kill, defense of the state was an acceptable exception according to Augustine. To resolve the issue of when fighting for the state was permitted, Augustine tried to provide a measure for determining when war was justified. He wrote that:

Just wars are usually defined as those which avenge injuries, when the nation or city against which warlike action is to be directed has neglected either to punish wrongs committed by its own citizens or to restore what has been unjustly taken from it.<sup>9</sup>

Although Augustine is credited with founding the Just War Tradition, he never developed his thoughts on *bellum justum* into tenets or rules that sovereign states could follow. St. Thomas Aquinas furthered the study of just warfare by interpreting

Augustine's writings and summarizing them into a set of rules. First, Aquinas wrote that only a legitimate authority could initiate a war. In addition, he proposed that a ruler should only wage war if that war has a just cause. Finally, he believed, a ruler should only resort to war with the right intention. These rules, written in the Summa Theologica, are still considered part of the Just War tenets today.

Sixteenth century philosopher, de Vitoria, and later Francisco Suarez, further adapted and modified the tenets for just warfare. In addition to Aquinas' conditions of legitimate authority, just cause, and right intention, they added three additional conditions. These included: "the evils of war, especially the loss of human life, should be proportionate to the injustice to be prevented or remedied by war; peaceful means to prevent or remedy injustice should be exhausted; [and] an otherwise just war should have a reasonable hope of success."<sup>10</sup> Today these tenets are commonly referred to as the tenets of proportionality, last resort, and reasonable chance of success, respectively.

Other Just War Tradition tenets suggest that the state must publicly declare war, and that the state must use just conduct when fighting the war. With minor adjustments, these tenets have remained relatively unchanged. Although current just war theorists agree on a majority of the just war tenets, some philosophers suggest that the tenets of just intent and just conduct do not belong. While today the separation of *jus ad bellum* and *jus in bello* is commonly recognized, some philosophers disagree on the division between the tenets of each. Christopher and Walzer suggest that the just intent tenet is extraneous and is incorporated in the other tenets. They also believe that the just conduct tenet is a *jus in bello* issue. O'Brien disagrees. He maintains that a state must satisfy the tenet of just conduct for the war to remain just.<sup>11</sup>

However, just conduct is not a tenet of *jus in bello*. Rather, just conduct is a good description of what *jus in bello* means. There are two commonly recognized tenets of just conduct in war that grew from the concerns over who could be legally attacked, what means of attack could be used, and the treatment of prisoners.<sup>12</sup> The first tenet is proportion. The principle of proportion states that, “the harm judged likely to result from a particular military action should not be disproportionate to the good aimed at.”<sup>13</sup> The second tenet, discrimination, concerns the problem of who can be justifiably attacked and who are non-combatants. It theorizes that “non-combatants should be immune from direct attack.”<sup>14</sup> From these tenets, international treaties, such as the Geneva Conventions and the Leiber Code, were adopted in the hope of protecting innocents and prisoners during combat. In addition, these treaties tried to limit some of the horror of combat by restricting the types of weapons used. Although intended for war, I think that these same *jus in bello* principles also apply during intervention. I will discuss their significance later.

Although I have outlined a number of frequently suggested tenets for just intervention, for continuity I will follow the popularly recognized tenets of the Just War Tradition (proposed by Christopher and Walzer) for my discussion of just intervention. In accordance with the Just War theory, Christopher and Walzer summarize the following six historical conditions necessary for a nation to be justified in going to war: (1) The war must have a just cause; (2) The war’s potential gains must be proportional to the losses; (3) The war must also have a reasonable chance of success; (4) The country must publicly declare war; (5) Only a legitimate authority can declare war; and (6) Countries

can only go to war as a last resort. Armed with these six conditions of *bellum justum*, I will modify them to reflect intervention and use them to define a just intervention.

### The Tenets of Just Intervention

A state can declare war only if the cause is just. Similarly, the international community must show just cause when it resorts to intervention in a sovereign state. On the surface, it would seem that one could easily fulfill the condition of just cause for interventions. Historically, however, warring states have defined just cause in many different ways. Covall presents three “traditional” principles for just cause: (1) defense against actual or threatened injury from some other state or states; (2) recovery of or redress for the loss of that which lawfully belonged to or was lawfully due the injured state; (3) punishment of the state or states guilty of wrong doing.<sup>15</sup> Regardless of what other criteria are used, *bellum justum* theorists commonly accept self-defense as a primary justification for just cause. However, self-defense would not apply when interventions were for humanitarian reasons. Humanitarian interventions rarely involve a threat to security or self-defense. (Although, as I will discuss later, some states have considered self-defense as the only legal recourse for violating a state’s sovereignty). Furthermore, *bellum justum* theorists often cite territorial disputes as a legitimate case for just cause.<sup>16</sup> The U.S.-lead Coalition used these same notions of territorial sovereignty and Kuwaiti self-defense as justification for liberating Kuwait. However, using the cause of territorial disputes applies only to interventions when a state’s national security is threatened. Furthermore, the question of what satisfies a just cause is often susceptible to debate. Therefore, we need to search further for a just cause for interventions.

Consider the atrocities committed in Bosnia, Cambodia, northern Iraq, and Rwanda. Would not the prevention of genocide and termination of “ethnic cleansing” satisfy the condition of just cause? What about the mass starvation in Somalia? It would seem that the senseless suffering of individuals in those countries would demand intervention. Furthermore, from a deontological position, I would suggest that it is our duty to stop these atrocities from occurring (Chapter 3). Their suffering is just cause for the international community to intervene. Alternatively, if an operation was intended to keep warring factions apart (peacemaking) or enforce a peace settlement (peacekeeping), the cause would also be just.<sup>17</sup> Thus, for an intervention to have a just cause, the cause must meet one or more of the following: prevent genocide, prevent ethnic cleansing, prevent other serious human rights violations, or it must be undertaken for the purpose of peacemaking, peacekeeping, and providing a rapid method for distributing humanitarian aid. However, the list is probably not complete. Additional causes that may be defined as just, although they are controversial, include capturing war criminals (e.g. from the former Yugoslavia) and conducting nation building (e.g. in countries like Somalia).<sup>18</sup> Applying the tenet of just cause will help ensure interventions are undertaken for the right reasons.

The second condition of *jus ad bellum* is that the costs of the war must be proportional to the prospective gains. Thus when fighting a just war the potential gains must balance or outweigh the potential losses. Likewise, the costs must not outweigh the gains. One of the major factors considered before deciding to intervene is the cost of the intervention. Based on the figures from the Defense Budget project, Michael O’Hanlon estimates the cost for such a humanitarian intervention “might be expected in most cases



to range from \$3 billion to \$8 billion [per year] per 50,000 personnel deployed.”<sup>19</sup> The wide range of cost estimates reflects the difficulty in making accurate estimates for any military operation. Terrain, weather, political climate, and even the remoteness of the target state all affect the costs of intervention. Additionally, O’Hanlon’s cost analysis does not include the expected loss of life. While accidents occur in any mission, casualty figures for an intervention can vary widely depending on the type of mission, resistance faced, etc. Although the costs in both material and lives may be high, these interventions are intended to save lives. The problem becomes one of “How much is too much?”

What price do we put on human life? Money alone cannot be the deciding factor. An \$8 million intervention is small when compared to what some states pay for defense. For example, the 1999 appropriation for U.S. Defense spending is \$278.8 billion.<sup>20</sup> The real issue in any intervention becomes the cost of human life. However, the tenet of proportionality ensures that the international community intervenes only when the gains in lives saved would outweigh the costs of material and lives; and alternatively, would not intervene when those costs and loss of life were too high.

Wars must also have a reasonable chance of success to be considered just, and so must interventions. Those who oppose intervention soon forget that there have been several successful interventions in the last thirty years. Examples include the Indian intervention into what was then East Pakistan (Bangladesh) in 1971, the Tanzanian intervention to stop the depredations of Idi Amin in Uganda in 1978-1979, the Vietnamese intervention in Kampuchea in 1978-1979, Operation Provide Comfort in Iraq from 1991 on, Operation Restore Hope in Somalia in 1992-1993 (prior to the policy change to pursue Aidid), and Operation Uphold Democracy in Haiti in 1994.<sup>21</sup> Several

common factors contributed to the success of these interventions. Like any successful business plan or operation, an intervention must be well planned, well organized, and well executed. The social and political environment at the location of the planned intervention must be analyzed and understood *before* the decision to intervene. In addition, contributing states must make available sufficient resources (personnel, material, transportation, and security measures) at the time of intervention. Lastly, "a success objective" (humanitarian end) for the intervention must be defined, so that all participants work toward the same objective.

In addition to satisfying the aforementioned conditions, a just war and a just intervention must be publicly declared. Satisfying the public declared tenet for intervention is a simple process. Publicly declaring an intervention could merely be a matter of passing a Security Council Resolution (SCR). Some past examples include the passage of SCR 688 for Operation Provide Comfort in northern Iraq, SCR 792 for intervention in Somalia, and SCR 867 in operations in Haiti. Specifying that all justified interventions must be publicly declared also eliminates questionable justification for the "covert" interventions in Africa, Southeast Asia, and Latin America that were so prevalent during the Cold War.

According to the fifth condition for a just war, only a legitimate authority can declare war. This condition exists to prevent individuals or small groups that do not represent the state from legally conducting war. However, finding the legitimate authority for intervention in the international arena can sometimes become complicated. No state should have the legitimate authority to intervene in another, for the simple reason that there would be no system of checks and balances. Intervention between states

could lead to an unstable pattern of counter-intervention. Unchecked, this could mitigate the humanitarian intents of the original intervention. It is a collective international consensus that helps differentiate between intervention and war.

Fortunately, there is a forum for international consensus. The United Nations provides an example of legitimate authority. Each recognized state is a member of the United Nations and each member can voice an opinion and vote on UN Resolutions. The Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE) are also examples of legitimate authorities which may conduct limited interventions in their areas of influence. (However, I think that these regional authorities should defer to the UN for final authority to intervene. Should the UN decide to intervene, it has the option of assigning responsibility for the intervention to one of these regional authorities. Thus, for example, the OSCE monitors the Serbian troop withdrawal from Kosovo and reports the progress to the UN.) As the international legitimate authority, the UN can decide when to intervene. However, some states do not recognize the authority of the UN. I will discuss this problem later.

The last condition a state must satisfy to justify war is that the war be started as a last resort. Similarly, an international intervention should be a last resort. For example, when the public called for the end of the fighting war in Yugoslavia, Security Council Resolutions were ignored, and diplomatic talks stagnated. Interventions such as the NATO air strikes in the former Yugoslavia were justified to satisfy the tenet of last resort. However, not every case of intervention involves a government that is derelict or criminal. In Somalia, there was no government. Sometimes, the amount of human suffering satisfies the tenet of last resort for intervention. However, there could be

problems determining when the tenet of last resort is fulfilled, especially when one bases the decision to intervene upon some threshold of human suffering (e.g. numbers of murders or the degree of starvation.) When should the international community intervene?

Perhaps even waiting until the last resort could reduce the effectiveness of the intervention. Williamson suggests that, "the best time to intervene militarily is early, not for example after sanctions have been tried for considerable time and then adjudged to have failed."<sup>22</sup> However, the last resort for intervention need not be *das letzte Mittel* (in terms of time) but rather it should be the *das aeusserste Mittel* (in terms of seriousness).<sup>23</sup> Thus, we should intervene only when the last resort is "most serious." However, this version of serious-based decision making poses problems of its own. Consider the genocide in Rwanda. Recall that the best estimates of the murders committed in Rwanda were between 500,000 and 1 million.<sup>24</sup> Should the intervention have occurred when the casualties numbered in the hundreds of thousands? Common sense would dictate when it is time to intervene. How about when the casualties only reach 10,000? Intervention would seem a reasonable response. The decision to intervene, however, becomes harder in cases where the numbers of casualties, refugees, or cases of starvation are smaller. One possible way to mitigate this problem of determining when last resort is satisfied is by concurrently looking at the tenet of proportionality. When the expected gains are proportionate to the expected losses, it is time to intervene.

If we modify the existing tenets of the Just War Tradition, we are able to derive the necessary conditions of just intervention. The intervention must have a just cause; it must be proportional; the intervention needs to have a reasonable chance of success; and

the international community must declare to the target state the intent to intervene. Further, the United Nations can function as the legitimate authority for international interventions. Whether considered as time dependent or seriousness dependent, we can intervene only as a last resort. The Just War Tradition tenets provide a workable framework for determining the legitimacy and justification for intervention.

### A Question of Legitimacy and Just Cause

Although the Just War Tradition seems perfectly suited for justifying intervention, it has not been universally adopted as the framework for determining when to intervene. Some feel that simply modifying the Just War Tradition is not sufficient. They feel that “when forcible intervention is brought under the framework principles, traditional just war criteria have to be significantly adapted.”<sup>25</sup> Others may have objections to some of the tenets of the Just War Tradition themselves. As I suggested earlier, using the tenets of *bellum justum* as the framework for justifying intervention is not unopposed. These objections stem from the fact that the Just War Tradition has some inherently ambiguous components in several of its necessary conditions. Two areas that are subject to differing interpretation are the tenet of just cause and the question of legitimate authority. These are related tenets because only the legitimate authority can decide when the cause of intervention is just.

Who determines just cause? In order to legitimize the decision to intervene, the decision must be made by an acceptable authority and “the best authority is international, multilateral – the UN is the obvious example.”<sup>26</sup> The United Nations is the closest international equivalent of a state’s legitimate government. However, many states have selectively ignored the authority of the UN and some have publicly denied its authority.

One of the problems with the legitimacy of UN authority is that the decision to intervene, aid, or initiate trade sanctions is held by the Security Council. The Security Council's power to intervene poses two problems. First, there may not be a consensus for intervention, or worse, there may be opposing votes as to whom the intervention will benefit. For example, in the Gulf Crisis, the Security Council demanded the return of Kuwait to a pre-invasion state.<sup>27</sup> However, under other but similar circumstances the Security Council might have acted differently. O'Brien tries to explain this potential problem. He writes:

Even though an enforcement action was carried out by the United States and other members of the UN coalition against Iraq, the status of UN war-decision law may not be fundamentally or permanently changed.... One can think of other possible conflicts, e.g., between India and Pakistan, where Security Council members and other members might support different belligerents. Their vetoes and other votes might block Security Council action.<sup>28</sup>

Could the Security Council vote some other way under the same circumstances? If so, then the determination of just cause, or whether the other conditions of just war are met, does not seem to lie on firm moral ground. Rather, such decisions might be swayed by other influences, such as balance of power, economic conditions, and internal political concerns. Walzer concurs with this potential problem. He thinks that some coalitions of states, cooperating for the sake of their own shared interests, could steer the voting of the Security Council away from the original proposal. Furthermore, the Council may not reach any agreement and further loss of life may occur during this stalemate.<sup>29</sup>

Regardless of the potential problems, the UN is the best international authority currently available to judge the validity of an intervention. Perhaps the UN, and especially the Security Council, needs to reform their procedures, especially those outdated ones established at the end of World War II. Unfortunately, there are no major procedural changes anticipated in the near future. Still, it seems wise to have an international entity such as the UN, with at least partial representation from all the states, deciding on the issue of intervention. It is far too simple for countries to justify their own actions from their own point of view (e.g. Iraq's invasion of Kuwait, Germany's occupation of Austria and Czechoslovakia).

Consider the justification Iraq offered for their invasion of Kuwait. Iraq presented several defenses for their invasion that could be viewed as just cause. First, there is significant historical evidence that the Iraqi invasion of Kuwait seems to have begun as a territorial dispute. For example, Iraq had a long-standing territorial claim to Kuwait. Long before the Gulf crisis, Kuwait was considered to be the 19<sup>th</sup> province of Iraq. During the reign of the Ottoman Empire, Kuwait was ruled as a part of Iraq. However, Britain separated Kuwait from Iraq after the defeat of the Ottoman Empire in World War I. Kuwait was then a protectorate of Britain until 1961 when Kuwait became an independent nation. In the Gulf, Britain also gave the islands of Bubiyan and Warbah, traditionally considered part of Iraq, to Kuwait.<sup>30</sup> This separation of the Ottoman Empire into several countries effectively reduced Iraq's land size and number of oil fields, thereby leaving Iraq practically land-locked. Citing these territorial claims, Iraq has always considered that Kuwait is part of Iraq. Saddam Hussein summarized how the invasion solved this issue during his September 24, 1990 speech on the Republic of Iraq

Radio. He said, "Kuwait is Iraqi...they are a people who have returned to the fold; a land that has been restored to the people."<sup>31</sup> The Iraqis viewed the invasion of Kuwait as merely a re-establishment of the traditional Iraqi border.

Iraq also claimed self-defense as justification for their invasion. They perceived that Kuwait had launched what amounted to an *economic first strike* against Iraq. In violation of their OPEC treaty, Kuwait had cut oil prices and increased oil production levels.<sup>32</sup> Kuwait even pumped more than their negotiated share of oil from the Iraqi-Kuwaiti jointly owned Rumal oil fields.<sup>33</sup> Saddam Hussein summarized that Iraq was undergoing an economic attack by Kuwait when he stated:

Frankly, war is fought not only with soldiers.... There are other means of conducting wars, economic means. We hope that our brethren who do not wish open war with Iraq will realize that this economic kind of war will not be tolerated any longer. We have come to a point beyond which we cannot go.<sup>34</sup>

Additionally, Iraq told the U. S. Ambassador that Kuwait was involved in territorial encroachment on Iraqi soil.<sup>35</sup> Moreover, it appears as though Kuwait was trying horizontal drilling under the border.<sup>36</sup> With their historical territorial claim to Kuwait and evidence of Kuwait's economic warfare, Iraq felt that the invasion of Kuwait had just cause.

The international community, especially the thirty-three members of the coalition, of course, disagreed. The international community viewed the Iraqi aggression not only as a violation of the Laws of Warfare, but as an "assault upon a people, their everyday life and their physical survival."<sup>37</sup> It was the UN, exemplified by the passage of SRC



678, that determined that Iraq's actions were wrong, not the individual state of Kuwait, or even the U.S.

The same consideration must be applied to the decision for any intervention. In order to justify intervention, and to have that intervention considered acceptable to the international community, each case should be brought forward, discussed, decided upon, and then executed at the multinational level. The UN is currently the best international body to make a decision to intervene.

### Intervention vs. Sovereignty

As we solidify the guidelines to be used to justify intervention, we must also answer the problem of violating the sovereignty of another state. Since the Treaty of Westphalia, individual states, international law, the international community, and even the Catholic Church have recognized the benefits of sovereignty and have resisted changes to the rights of sovereignty states enjoy. In 1758, de Vattel wrote, "states have rights to legislate and administer justice without interference from outside their borders."<sup>38</sup> The protection against violations of a state's sovereignty are further recognized and codified in the UN Charter. In fact, the UN was founded on the recognition that sovereignty is essential for international peace. Article 2 (1) reads that the "Organization is based on the principle of the sovereign equality of all its members."<sup>39</sup> Furthermore, the use of force is prohibited against "the territorial integrity or political independence of any state,"<sup>40</sup> and an acceptance that nothing shall authorize the UN "to intervene in matters which are essentially within the jurisdiction of any state."<sup>41</sup> In addition, the U.S. Catholic bishops wrote that, "sovereignty and non-intervention into the life of another state have long been sanctioned by Catholic social

principles....”<sup>42</sup> Any attempt at intervention whether humanitarian or not, would violate a state’s sovereignty.<sup>43</sup>

Furthermore, the problem of intervention and sovereignty has a long and contentious history. Hobbes argued that sovereign states have no authority over other states. Charles Fox, a member of the House of Commons in 1794, also spoke of the common notion of sovereignty. He said:

If a people, in the formation of their government, have been ill-advised, if they have fallen into error, if they have acted iniquitously and unjustly toward each other, God is the only judge; it is not the province of other nations to chastise their folly, or punish their wickedness, by choosing who should rule over them, or in what manner and form they should be governed.<sup>44</sup>

Any type of intervention necessarily violates the principle of sovereignty. However, in the intervention I am proposing, I am not trying to suggest that the principle of sovereignty is false, nor do I think that other states’ rights should be swept aside for just any intervention. We should intervene only in dire circumstances when the tenets of Just Intervention are met.

The problem is one of justifying a limited violation of sovereignty to allow for international intervention. One proposed argument for allowing selective violations of sovereignty is based upon the theory that a state’s right to existence, hence its right to sovereignty, is founded upon the collective rights of its citizens. Grotius thought that “certain rights belong to every person by virtue simply of membership of the human race, and that there is a universal obligation to ensure that these rights are respected.”<sup>45</sup>

Membership in the human race entails certain rights of self-determination. Teson has

applied this theory to propose that interventions can be right in certain cases. He suggests that there are two pillars of international law: one based on human rights and the other based on state sovereignty. This dichotomy of views is often at the root of confusion over whether intervention is just or not. Thus, Teson suggests that our notion of international law may need modifying to include a more flexible account of sovereignty.

The creation of the state arises from the need to protect the individuals in that state. Although we commonly think that states exist as a defense against foreign aggression, the state also exists to protect the individuals' rights at home.<sup>46</sup> Furthermore, a state that forgoes the protection of its citizens or violates their rights loses its own right of existence or sovereignty. The Declaration of Independence is based on similar ideas. Michael Smith writes:

[T]he justification for state sovereignty cannot rest on its own prescriptive legitimacy. Instead, it must be derived from the individuals, whose rights are to be protected from foreign oppression or intrusion and from their right to a safe, sovereign framework in which they can enforce their autonomy and preserve their interests ... that a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty.<sup>47</sup>

When a state violates the rights of its subjects, a rigid application of the notion of sovereignty becomes shaky. Augustine wrote in De Civitate Dei 4.4, "Take away justice, and what are governments but brigandage on a grand scale." Following the Just Intervention tenets, a legitimate authority, such as the UN, can interpret the criminal actions of the state against its subjects, or the inaction of the target state to relieve their subjects' suffering, as just cause for intervention. As a matter of fact, this notion of a

more flexible attitude toward sovereignty in emergencies can be found in the UN Charter. Chapter VII of the Charter concerns action with respect to threats to the peace, breaches of the peace, and acts of aggression.<sup>48</sup> Under Chapter VII, threats to peace and breaches of the peace could be considered just cause for intervention.

New technology is another reason that the notion of sovereignty is becoming less rigid. Communication makes it easier to cross borders and mediate differing ideologies. Furthermore, states today have become less autonomous. Separate, self-interested states, where isolationism was the ideology (e.g. the U.S. before World War I and between the Wars), have given way to a kind of "economic interdependence." The G7, OPEC, and European Union are evolving from purely economic organizations into political entities. Sovereignty is important to prevent unfettered, illegal intervention, but it should not be an objection in severe cases of human rights abuses.

Besides the opinion that intervention can, in certain situations, violate a state's sovereignty, there exists another, potentially worse, difficulty with intervention. If conditions permit, there could be a problem of long-term intervention. Successful intervention is "likely to require a much more substantial challenge to conventional sovereignty: a long-term military presence, ... and along the way, making all this [humanitarian relief, nation building] possible, the large scale and reiterated use of force."<sup>49</sup> Long-term intervention poses many difficult issues (not just involving sovereignty). Logistics, military readiness, and political favor would all be stressed by a long-term intervention. However, the impacts of long-term intervention should be reviewed under the tenet of proportionality. The UN should then determine if the intervention has a reasonable chance of success. If the proposed intervention is

proportional and has a reasonable chance of success, long-term intervention may not be an insurmountable problem.<sup>50</sup>

### *Jus in Bello* and Intervention

Before I conclude, I want to discuss conduct during intervention. I have presented a *jus ad bellum* framework for justifying intervention, but what principles can we use to monitor the conduct of the agency's members on the ground? Recall the two principles of *jus in bello*: discrimination and proportionality. I propose that these same two tenets apply in interventions as they do in war. The concept of treating those who conduct humanitarian intervention as soldiers in combat may seem strange at first. But historically, many interventions, intended only to supply food and clean water, have been conducted by the military or with the help of the military. Consider Operation Turquoise in Rwanda and Operation Restore Hope in Somalia. Both were humanitarian relief interventions that required multinational military forces to ensure that supplies were distributed evenly, fairly, and to remote areas. Former UN Secretary General Dag Hammerskold said, "peacekeeping is not a job for soldiers, but only a soldier can do it."<sup>51</sup>

The principle of proportion states that "the harm judged likely to result from a particular military action should not be disproportionate to the good aimed at."<sup>52</sup> The same principle applies during intervention. Forcing a convoy transporting food through an insurgent force's roadblock may result in more casualties than the delivery of food would have saved. Perhaps that particular course of action, breaching the roadblock, is not the only alternative. Negotiation, using a different route, and even the threat of force are better alternatives to the use of force. Although force may be sometimes necessary, the soldier on the ground must decide if her actions would result in a proportionate good.

The other *jus in bello* principle, the tenet of discrimination, concerns the problem of who can be justified as combatants and who are non-combatants. It theorizes that “non-combatants should be immune from direct attack.”<sup>53</sup> Discrimination also applies in intervention. Non-combatants have a right to life. However, in many cases the distinction between combatants and non-combatants blurs. During the raid to capture Aidid in Somalia, renegade Somali gunmen and U.S. soldiers became combatants. To protect themselves from U.S. Forces’ fire, the Somali gunmen used women and children as shields. In a case like this, the principle of discrimination becomes difficult to actualize. The soldiers had to determine when to shoot and when to refrain from shooting. In a similar way, the intervening forces in accordance with the international authority must establish rules of engagement during intervention operations.

The principles of proportionality and discrimination are not perfect; and, as I have shown, they are often hard to uphold. However, they are important guidelines for the members of the agency to follow. They will help her ensure that the intent of the intervention is fulfilled and that she does not contribute to the problems she was sent there to resolve.

### Conclusion

I have presented the Just War Tradition as a possible framework for justifying intervention. With slight modifications, the same war tenets may be used for peaceful intentions, such as intervention for humanitarian reasons. Foremost, an intervention must have a just cause. I have suggested several situations where intervention is justified, such as preventing genocide and peacekeeping. These missions would satisfy the principle of just cause. Any losses incurred during intervention should be proportional to the gains;

additionally, the conditions for a reasonable chance of success must be discussed and planned prior to the decision to intervene. Finally, what constitutes last resort may not always be measured in terms of time, because the severity of the situation may dictate the time to intervene. To avoid the questionable intent of covert interventions, the decision to intervene must be made public.

Only a legitimate international authority can intervene. Additionally, I have proposed that the UN is the logical international authority. However, problems with the UN as the legitimate authority still need to be resolved. Palestinians and others in the Muslim world could argue as follows:

Kuwait was occupied and within six months the world assembled a massive military force to expel Saddam Hussein. Palestinians wait 25 years and more, but receive little help in ensuring that SCR 242 is implemented.... For the UN to carry conviction as the “legitimate authority” to authorize armed intervention ... it must be seen to be impartial and consistent in the application of international law.<sup>54</sup>

However, the UN remains the best and, currently, only legitimate option.

By meeting the same tenets that are used to justify war, I have shown that the just war tenets of *jus ad bellum* can be used as a framework for intervention. I addressed several potential pitfalls of applying the Just War Tradition to humanitarian intervention. Additionally, I showed that the question of sovereignty can be “set aside” in certain cases where human rights violations are severe. In cases where a state is criminal or negligent, the target state has forfeited their right to sovereignty.

While sovereignty remains a fundamental state right, the face of sovereignty is changing with the evolving formation of an international community. Additionally, a growing economic interdependence, as evidenced by how the G7, OPEC, and European Union (EU) are evolving from purely economic organizations into political entities. (Operation Allied Force is an EU-sponsored, NATO force air intervention in Kosovo and Serbia). Sovereignty is necessary to prevent illegal intervention, but it should not be an rigid barrier allowing severe cases of human rights abuses.

Starvation, disease, mass deportations, and ethnic cleansing are all tragic examples of human suffering and criminal activity that cast shadow over our world today. In most cases, these atrocities can be prevented. Furthermore, "... all states have an interest in global stability and even in global humanity, and in the case of wealthy and powerful states like ours, this interest is seconded by obligation."<sup>55</sup> If the state in question cannot act, or refuses to act, then international intervention may be required. To determine when to intervene, the UN should apply the tenets of Just Intervention.



## Notes

<sup>1</sup> Lawyers Committee for Human Rights, Prosecuting Genocide in Rwanda: The ICTR and National Trials (New York: Lawyers Committee, 1997), 3.

<sup>2</sup> Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 184.

<sup>3</sup> Andrew J. Goodpaster, When Diplomacy is not enough: Managing Multinational Military Interventions (Washington D.C.: Carnegie Commission on Preventing Deadly Conflict, 1996), 11.

<sup>4</sup> By intervention, I am referring to the definition: Intervention =<sub>df</sub> an agency interference, by force or coercion, into the affairs of a target (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights. In addition, I will define a "humanitarian intervention." as Humanitarian Intervention =<sub>df</sub> an intervention authorized by relevant organs of the internationally recognized authority where states are voting members for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights; such that this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means. See Chapter 2. These include any humanitarian-type military supported intervention such as military interventions with humanitarian intent (threatened air strikes in Kosovo), military supported distribution of humanitarian aid (Rwanda, Northern Iraq, Somalia), and peacekeeping missions (Bosnia, and Cyprus).

<sup>5</sup> See Hugo Grotius, The Law of War and Peace, Translated by Francis W. Kelsey (Indianapolis: Bobbs-Merrill, 1962).

<sup>6</sup> UN Charter, Article 2 (7).

<sup>7</sup> Gerard Elfstrom, "On Dilemmas of Intervention," Ethics 93 (July 1983): 713. See also Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977), 53-54.

<sup>8</sup> For a good discussion on the varied history of the Just War Tradition see Paul Christopher, The Ethics of War and Peace: an Introduction to Legal and Moral Issues (New Jersey: Prentice Hall, 1994).

<sup>9</sup> Augustine, Questions in Heptateuchum, Bk. VI, 10a, quoted in Christopher, 40.

<sup>10</sup> Richard J. Regan, Just War: Principles and Cases (Washington D. C.: The Catholic University of America Press, 1996), 17-18.

<sup>11</sup> Christopher, 88-95 and Walzer (1977), 21, 28. See also William V. O'Brien, The Conduct of Just and Limited War (New York: Preager Publishers, 1981), 35; J. E.

Hare, and Carey B. Joynt, Ethics and International Affairs (New York: St. Martin's Press, 1982), 55-66; and Robert L. Holmes, On War and Morality (Princeton: Princeton University Press, 1989), 176-175.

<sup>12</sup> Christopher, 100.

<sup>13</sup> Ramsbotham and Woodhouse, 228.

<sup>14</sup> Ramsbotham and Woodhouse, 228.

<sup>15</sup> Charles Covell, Kant and the Law of Peace (New York: St. Martin's Press, 1988).

<sup>16</sup> Whether just or not, history is full of examples of wars fought over territory. Look at the recent disputes over the West Bank and Gaza strip in the Middle East and the Falklands war fought between Argentina and Britain over the Falkland Islands. See also Regan, 59-63.

<sup>17</sup> For a further discussion see David Fisher's "Some Corner of a Foreign Field," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 29.

<sup>18</sup> See also Comfort Ergo and Suzanne Long "Cases and Criteria: the UN in Iraq, Bosnia, and Somalia," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 161-3.

<sup>19</sup> Michael O'Hanlon, Saving Lives with Force: Military Criteria for Humanitarian Intervention, (Washington D.C.: Brookings Institution, 1997), 64.

<sup>20</sup> Army Times, 9 November 1998, 18.

<sup>21</sup> Oliver Ramsbotham, "Humanitarian Intervention: the Contemporary Debate" in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 63-64.

<sup>22</sup> Roger Williamson, "An Ethical Framework – Or Just Intervention," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 255.

<sup>23</sup> Williamson, "An Ethical Framework," 256.

<sup>24</sup> Lawyers Committee for Human Rights, Prosecuting Genocide in Rwanda, 3.

<sup>25</sup> Ramsbotham and Woodhouse, 228. They offer a different framework instead. See 223-229.

<sup>26</sup> Michael Walzer, "The Politics of Rescue," Dissent (Winter 1995): 39.

<sup>27</sup> Security Council Resolution 678.

<sup>28</sup> William O'Brien, Law and Morality in Israel's War with the PLO (New York, 1991), 89.

<sup>29</sup> Walzer "The Politics," 39.

<sup>30</sup> Musallam Ali Musallam, The Iraqi Invasion of Kuwait: Saddam Hussein, His State and International Power Politics (London, New York: British Academic Press, 1996), 90.

<sup>31</sup> Quoted in Charles R. H. Tripp, "Symbol and Strategy: Iraq and the War for Kuwait", in The Iraqi Aggression Against Kuwait: Strategic Lessons and Implications for Europe, ed. W. Danspeckgruber (Westview Press, 1994), 27.

<sup>32</sup> Tripp, 26.

<sup>33</sup> Regan, 49 and 172.

<sup>34</sup> Musallam, 93.

<sup>35</sup> Musallam, 95.

<sup>36</sup> Regan, 172.

<sup>37</sup> Musallam, 101, discussing Walzer's views from "Justice and Injustice in the Gulf War."

<sup>38</sup> Quoted in Anthony Harvey, "Can Intervention be Just?" in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 51.

<sup>39</sup> Reprint of the UN Charter in Regan, 213-231.

<sup>40</sup> Article 2 (4). Regan, 214.

<sup>41</sup> Article 2 (7). Regan, 215.

<sup>42</sup> Cited in Williamson, "An Ethical Framework," 255.

<sup>43</sup> For further discussion on the problem of sovereignty and intervention see Richard Little, "Recent Literature on Intervention and Non-Intervention," in Political Theory, International Relations, and the Ethics of Intervention, eds. Ian Forbes and Mark

Hoffman (New York: St. Martin's Press, 1993), 13-31; and Michael J. Smith, "Ethics and Intervention," Ethics and International Affairs 3 (1989): 1-26.

<sup>44</sup> Cited in Ernst B. Haas, "Beware the Slippery Slope: Notes toward the Definition of Justifiable Intervention" in Emerging Norm of Justified Intervention, eds. Laura Reed and Carl Kaysen (Cambridge: Committee on International Securities Studies, 1993), 63.

<sup>45</sup> Cited in Harvey, 51

<sup>46</sup> Fernando R. Teson, A Philosophy of International Law (Boulder, CO: Westview Press, 1998), 3-7. See also Walzer, Just and Unjust Wars, 53-55. Although Walzer is using this notion that a state gets its rights from its citizens to argue that the state has the right to defend itself as those citizens have the right to defend themselves.

<sup>47</sup> Michael Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," Ethics and International Affairs 12 (1998): 76.

<sup>48</sup> UN Charter, Chapt. VII, reprinted in Regan, 221-224.

<sup>49</sup> Walzer, "The Politics," 37.

<sup>50</sup> For example the UNFICYP has kept the peace in Cyprus for over 30 years and still monitors the disagreement between Turkey and Greece for possession of Cyprus.

<sup>51</sup> U. S. Department of the Army, Peace Operations, Field Manual 100-23 (1994).

<sup>52</sup> Ramsbotham and Woodhouse, 228.

<sup>53</sup> Ramsbotham and Woodhouse, 228.

<sup>54</sup> Williamson, "An Ethical Framework," 256-7.

<sup>55</sup> Walzer, "The Politics," 38.

## CHAPTER 6

### A SOLUTION TO THE PROBLEM OF INTERVENTION: A CONCLUSION

Among true worshipers of God those wars are looked on as peacemaking which are waged neither from aggrandizement nor cruelty but with the object of securing peace, of repressing the evil and supporting the good.

– St. Thomas Aquinas.<sup>1</sup>

In this, the last Chapter, I will summarize the path the project has taken in justifying intervention, from finding a definition for “intervention” to presenting a moral and legal framework for justifying intervention. As I have demonstrated, the problem of justifying intervention is complicated and eludes a simple strait forward solution. However, as the world strains against the disease of haters, distrust, and ethnic cleansing, the international community has no choice but to seek and implement a solution to the problem of intervention. As I write this, NATO warplanes are bombing Serb positions in Kosovo as part of Operation Allied Force. The NATO attacks have prompted strong debate on not only the question of whether this particular intervention in Kosovo is justified, but also the question of whether any intervention is justified. A myriad of interpretations of what constitutes intervention cause part of the difficulty deciding if an intervention is justified. Additionally, attempting to further justify humanitarian interventions only highlights the difficulties inherent in any intervention. Furthermore, a humanitarian intervention has its own controversial conditions complicated by its humanitarian nature in addition to those found in other interventions.

However, if we had a workable definition of “intervention,” the multi-faceted intervention problem becomes clearer and a basis for international acceptance becomes

possible. One of these facets includes a competing legal precedent for intervention that challenges the long-held position of non-intervention.

With a clear, all-inclusive definition of “intervention” in hand, one could also make strong moral arguments for intervention, especially when the intervention was for humanitarian reasons. By defining humanitarian intervention as an agency interference, upon authorization by relevant organs of the United Nations, by force or coercion, into the affairs of a target for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights, a deontologist could use the theory of human rights derived from humanitarian principles and maxims to argue for intervention on humanitarian grounds. Similarly, a consequentialist could argue for the same intervention, but for different reasons – intervening has the best consequences (or resulting best state of affairs).

Regardless of which moral theory one holds, justifying a humanitarian intervention should not be a complex project. Justifying an intervention can be a simple process of applying the tenets of *bellum justum*. The following are the modified conditions of just intervention: (1) The intervention must have a just cause; (2) The intervention’s potential gains must be proportional to the losses; (3) The intervention must also have a reasonable chance of success; (4) The country (agency) must publicly declare intervention; (5) Only a legitimate authority can declare or sanction intervention; and (6) Countries can only intervene as a last resort.

A close examination of historical examples of intervention, has not yielded a workable definition for what constitutes a military humanitarian intervention. Obscure conditions for defining “intervention,” accompanied by a long legal tradition of non-

intervention, have clouded the arguments for justified interventions. In Chapter 2, I sought various definitions of "intervention," and then extracted the essential conditions from each of these definitions. Searching both past and present literature concerning intervention, I selected those conditions that codified historical interventions. Reducing the research into a set of intervention conditions, I formulated a definition of "intervention" that applied the principles of agency, target, method, and purpose. I defined "intervention" as an agency interference, by force or coercion, into the affairs of a target, (i) to protect the agency's nationals, (ii) to protect interests considered vital to the agency, (iii) to support succession, (iv) for counter-intervention, or (v) to prevent or to put a halt to serious violations of human rights.

I then refined the definition of "intervention" to reflect the criteria commonly considered necessary for a humanitarian intervention. Humanitarian intervention, I proposed, is an intervention authorized by relevant organs of the internationally recognized authority where states are voting members for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights; such that this interference has (a) a humanitarian cause, (b) a declared humanitarian end, (c) a humanitarian outcome, and (d) is conducted through humanitarian means.

With a definition of "intervention," and the conditions that must be satisfied for an intervention to be declared humanitarian, I identified the legal precedent for intervention. Embedded in the Charter of the UN lies the foundation for the recognition and protection of human rights. Furthermore, I discovered that interventions are legal under international law when they oppose a threat to international peace and security. A legal precedent for intervention does not presuppose the act of intervention, nor does it

pose a direct threat to sovereignty in general and the tradition of non-intervention. However, "governments and armies engaged in massacres are readily identified as criminal governments and armies"<sup>2</sup> and might temporality lose their right to sovereignty. By committing genocide or threatening the peace, these criminal states would be legally open to intervention.

In Chapter 3, I sought to formulate a deontological approach to intervention. I demonstrated that one could make a deontological argument for intervention based on certain inalienable rights. I then analyzed the theories concerning human rights and their generated corresponding duties by Ross, Kant, Rawls, and others. After discussing that these duties to intervene are based upon fundamental human rights, I examined how we get these duties to intervene. One can argue that we have a duty to intervene as a *prima facie* duty or as a duty in accordance with a maxim derived under the veil of ignorance. Regardless of how these certain rights might generate duties, I demonstrated the differences between duties we have from our relationships, contracts, and business (special duty) and duties that everyone shares (general duty). In discussing this distinction between special and general duties, I showed that the obligation generated by a special duty does not vanish when the primary duty-bearer is unable to fulfil it – general duties obligate everyone. I further discussed that special duties often obligate a secondary duty-bearer. States, like individuals, have special and general duties. A state's general duties correspond to the universal human membership. When a state fails to fulfill its special duty, other states' general duties override, and obligate them to complete the unfulfilled special duty.



I further demonstrated that a realist argument for a principle of non-intervention based on an absence of an international community is untenable. Denying evidence of an interdependent international community is counter-intuitive and contravenes the realists' own theory of state self-interest. The state's own interest in stability, credibility, and seeking a prominent leadership role internationally will convince them to conduct interventions. Additionally, there is little evidence to show that acknowledging and valuing human rights is contrary to a state's self-interest. Moreover, protecting these rights might be in the best interests of the state. "Thus if it can be shown that ... interventions can also be obligatory, then 'nothing to be gained by us' can no longer be a valid excuse for inaction."<sup>3</sup>

I also explained some of the controversies with the deontological argument for intervention. A principle of "ought implies can" does not eliminate the unpopular conclusion that disproportionately insignificant numbers of human rights violations might obligate the international community to intervene beyond its resources. Furthermore, the deontologist position does not outline how we can judge the rightness of actions, specifically interventions. Additionally, we cannot resolve which duty takes precedent when faced with a scenario where competing duties collide.

In Chapter 4, I provided a consequentialist look at the problem of intervention and sought to overcome the pitfalls of the deontologists' argument for intervention. Not all interventions result in acceptable consequences. However, by evaluating the consequences of intervention, a state can determine when to intervene and when not to intervene. Using a world theory of consequentialism, we can avoid the problems

involving acts, various weights of consequences, and misapplication of the axiology that plague other traditional consequentialist theories, such as utilitarianism.

Additionally, a world theory of consequentialism is useful for those who believe that an intervention might lead to multiple insupportable interventions. Intervention in general may at times be obligatory, but once intervention is obligated in one case, it does not open the possibility for mass cases of intervention (some of which may be for the wrong reasons). Each state of affairs is different. Intervention in one state does not open the way for intervention in any state. If the state of affairs including the intervention in question is not true at the state's best worlds, then the state is not obligated to intervene and should not intervene.

Continuing aid and a mandate to intervene in every conflict may pose problems for states who judge the moral rightness of an act solely on applicable moral laws. Intervening solely because it is the state's duty under moral law, or intervening because it is the duty of all of us to protect human rights, may indeed incur the problem of Haas' slippery slope. It also might open cases of widespread, yet obligatory, intervention. Treating the decision to intervene from a consequentialist point of view negates these worries. Each state of affairs that involves intervention is evaluated separately from the other states of affairs that do not involve intervention. In addition, the state of affairs that involves intervention alone will be different from a state of affairs that includes intervention and mediating a peace settlement. Treating the question of intervention through consequentialism allows states to intervene and stop atrocities within their political and logistical constraints.

In Chapter 5, I presented the Just War Tradition as a possible framework for justifying intervention. With slight modifications, the same war tenets may be used as just intervention tenets. Foremost, an intervention must have a just cause and I suggested several situations, such as preventing genocide and ethnic cleansing as well as peacemaking, as examples of just cause for intervention. Additionally, for a justified intervention, any losses incurred during intervention should be proportional to the gains. What constitutes a reasonable chance of success must be discussed and planned before the actual intervention. An intervention must also be the last resort, only initiated when diplomacy fails. However, last resort may not always be measured in terms of time. The severity of the situation may dictate the time to intervene. Additionally, to avoid the problem of questionable intent of covert interventions, the agency must make a public declaration of their intended intervention.

Finally, only a legitimate international authority can authorize intervention. I proposed that the UN is the only legitimate international authority. However, several problems involving UN authority need to be resolved. Historically, humanitarian crisis and threats to peace have received disproportionate amounts of UN interest and resolve. "For the UN to carry conviction as the 'legitimate authority' to authorize armed intervention ... it must be seen to be impartial and consistent in the application of international law."<sup>4</sup> However, in spite of its difficulties, the UN remains the only legitimate option for a truly international authority.

As to the question of the right of sovereignty, "[S]overeignty is and remains a legal and moral norm of protection against outside interference and domination, set up in reaction against the medieval system of overlapping jurisdiction and dispersed

possessions.”<sup>5</sup> Nevertheless, I showed that the right to sovereignty can be “set aside” in certain cases of severe human rights violations. In cases where a state is criminal or negligent, the target state forfeits their strict right to sovereignty.

Growing international communication technology makes trade across borders and integrating differing practices and ideologies easier. Furthermore, today, states are becoming less autonomous. Separate, self-interested states, where isolationism was the ideology, have given way to a kind of informal international community based on an increasing “economic interdependence.” International organizations, formed around economic issues (e.g. the G7, OPEC, and European Union (EU)), are evolving into political entities and assuming international political roles. Sovereignty is important to prevent unfettered, illegal intervention, but it should not be an objection in severe cases of human rights abuses. UN Secretary-General Perez de Cuellar said in 1991, “the principle of non-interference with the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively and systematically violated with impunity.”<sup>6</sup>

Starvation, disease, mass deportations, and ethnic cleansing are all tragic examples of human suffering and often result from state-sponsored criminal activity. Furthermore, “all states have an interest in global stability and even in global humanity, and in the case of wealthy and powerful states like ours, this interest is seconded by obligation.”<sup>7</sup> If the target state in question cannot act, or refuses to act, then international intervention may be required. Applying the tenets of Just Intervention can determine if the intervention is justified.

In this project, I set out to establish a workable definition of "intervention" and the conditions for humanitarian intervention. I wanted to show a legal precedent for intervention as well as moral arguments for intervention from deontologists and consequentialist points of view. Then I modified the *bellum justum* conditions to fit the question of intervention. Have we answered the question of justified intervention? It seems as though we have. The conditions of just intervention specify that the intervention must have a just cause, proportionality, and a reasonable chance of success. Furthermore, the country (agency) must publicly declare intervention. Only the legitimate authority can declare or sanction intervention; and the agency can only intervene as a last resort when diplomacy fails.

Nevertheless, justifying an intervention entails no guarantee that all parties will condone the intervention. Parties outside the target will often disapprove of the intervention, even if a adequate case for intervention is brought against the target. The current crisis in Yugoslavia is a good example. The Security Council representative from the Russian Federation, Sergey Lavrov, opposed the intervention in Kosovo (Operation Allied Force) as "a unilateral use of force and a blatant violation of the United Nations Charter."<sup>8</sup> Lavrov voiced his fears that a dissolving principle of non-intervention, demonstrated by a UN acceptance of the NATO air strikes in Yugoslavia, could lead to widespread intervention abuse. He warned that "the virus of a unilateral approach could spread."<sup>9</sup>

The Russian representative raises a valid concern. As I demonstrated, however, one intervention does not necessarily lead to other interventions. In some circumstances, intervention is inevitable and to delay action increases the risks and the costs to the

agency. Furthermore, delaying the use of force often increases the chances for continued depredations in the target. Sir David Hannay, former Great Britain ambassador to the UN said, "the cost of remedying a situation once it gets out of control is indefinitely greater than the cost of ... international efforts to head off such disasters before they occur."<sup>10</sup>

The other issue Lavrov raises is that the NATO air strikes occurred without the consent of the UN Security Council.<sup>11</sup> His assertion is *prima facie* correct; there was no specific Security Council resolution mandating air strikes in Kosovo. However, NATO has legal support for intervention from Security Council Resolutions 1203 and, in particular, 1199. SCR 1199, "demanded that Serbian forces take immediate steps to improve the humanitarian situation [in Kosovo] and avert the impending humanitarian catastrophe."<sup>12</sup> Furthermore, Serbia violated the Organization for Security and Cooperation in Europe (OSCE) brokered cease-fire that they signed on October 25, 1998. Voting against the Russian proposed UN condemnation of the NATO intervention, the Slovenian delegate said that although the Security Council has a primary responsibility for international peace and security, it is not an exclusive responsibility.<sup>13</sup> "In the face of human disaster, however, internationalism has a more urgent meaning. It is not possible to wait; anyone who can take the initiative should do so. Active opposition to massacre and massive deportation is morally necessary; its risks must be accepted."<sup>14</sup> Although the UN delegates disagreed to the justification of the NATO intervention, this example reinforces the need for an international forum and specified legitimate authority for intervention.

When international atrocities are severe and the cost of ending the conflict outweighs the potential losses, there appears to be little strength in arguing for non-

intervention. Nevertheless, there remains one formidable barrier to humanitarian intervention. "The most difficult problems that now confront us are those not so much ethical or even military as political. Even if we accept that there is a duty to intervene, how do we in democracies, generate the will to do so?"<sup>15</sup>

Yes, the norm is not to intervene in other peoples' countries; the norm is self-determination. But not for these people, the victims of tyranny, ideological zeal, ethnic hatred, who are not determining anything for themselves, who urgently need help from the outside. And it isn't enough to wait until the tyrants, the zealots, and the bigots have done their filthy work and then rush food and medicines to the ragged survivors. Whenever the filthy work can be stopped, it should be stopped. And if not by us, the supposedly decent people of this world, then by whom?<sup>16</sup>

The definition for "intervention" and conditions for a just intervention themselves will not end the human suffering and depredations. We as members of the international community must act. First, we must acknowledge that individuals have certain rights. Then, only when we recognize that massive violations of these human rights constitute a threat to international peace, will we unilaterally condone interventions to stop the atrocities. Promulgation of the conditions of just interventions will lead to the international community's recognition that widespread indiscriminate killing is unacceptable and must be stopped. Perhaps committing our forces now to stop these depredations will prevent us from having to commit them later to repair a shattered peace.

## Notes

<sup>1</sup> Aquinas' Summa Theologia II, II, ae, 40, 1.

<sup>2</sup> Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977), 106.

<sup>3</sup> Kok-Chor Tan, "Military Intervention as a Moral Duty," Public Affairs Quarterly vol. 9 no. 1 (Jan 1995): 30.

<sup>4</sup> Roger Williamson, "An Ethical Framework – Or Just Intervention," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 256-7.

<sup>5</sup> Stanley Hoffman, The Ethics and Politics of Humanitarian Intervention (Notre Dame: Univ. of Notre Dame Press, 1996), 17.

<sup>6</sup> Quoted in Oliver Ramsbotham and Tom Woodhouse, Humanitarian Intervention in Contemporary Conflict (Cambridge: Polity Press, 1996), 60.

<sup>7</sup> Michael Walzer, "The Politics of Rescue," Dissent (Winter, 1995): 38.

<sup>8</sup> UN Security Council Press Release (SC/6657), 1. Located at <http://www.un.org/plweb-cgi/idoc>.

<sup>9</sup> UN Security Council Press Release, 1.

<sup>10</sup> Aurthur M. Schlesinger Jr., "America and the World: Isolation Resurgent?" Ethics and International Affairs 10 (1996): 163.

<sup>11</sup> UN Security Council Press Release, 2.

<sup>12</sup> UN Security Council Press Release, 3.

<sup>13</sup> UN Security Council Press Release, 11.

<sup>14</sup> Walzer, "The Politics," 38.

<sup>15</sup> Michael Howard, "Introduction," in Some Corner of a Foreign Field: Intervention and World Order, ed. Roger Williamson (New York: St. Martin's Press, 1998), 12.

<sup>16</sup> Walzer, "The Politics," 41.



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